

Sheriffs' Association of Texas



Since 1874

CIVIL PROCESS MANUAL

THRU 81ST LEGISLATURE, REGULAR SESSION

STEVE M. WESTBROOK
EXECUTIVE DIRECTOR

PREPARED BY: TOM BULLINGTON
LEGAL/TECHNICAL ADVISOR

SHERIFFS' ASSOCIATION OF TEXAS

Civil Process Manual

This Civil Process Manual was assembled by Tom W. Bullington, Legal-Technical Advisor to the Sheriffs' Association of Texas. It is made up of Statutes, Rules, Case law, Attorney General Opinions and forms used by the Court.

The Sheriffs' Association of Texas assumes no liability for the use of this material. Each person, depending on the information set out in this manual, should check with his/her District or County Attorney to verify that the information set out in this manual is correct and current law.

It is planned that, from time to time, there will be additional subject matter added to this manual.

Each year after the Legislature meets, if there are material changes, this manual will be updated to reflect the changes made by the Legislature.

If you have questions, please contact our Legal-Technical Advisor at www.txsheriffs.org or at 1-512-445-5888.

CIVIL PROCESS MANUAL

CONTENTS

Concept	1
General Comments	1
Liability of Sheriff/Deputy	2
Glossary	5
Chapter 1 HOMESTEAD (Property exempt from creditors claims)	9
Interest in land exempt from seizure	9
Definition of Homestead	10
Temporary renting of a Homestead	10
Abandonment of Homestead.....	10
Voluntary Designation of Homestead	10
Conflict with Federal law	12
Designation of a Homestead aid of enforcement of a judgment debt .	12
Notice to designate	12
Designation by homestead claimant	12
Designation by commissioner	12
Sale of excess.....	12
Summary Analysis	13
Chapter 2 PERSONAL PROPERTY EXEMPTIONS	17
Personal Property Exemption.....	17
Personal Property	18
Additional exemption for retirement plan.....	18
Exemption for college savings plan	19
Designation of exemption property	20
Transfer of non-exempt property.....	20
Child support liens.....	20
Exempt public library property	20
Exempt property-state.....	21
Taxation of retirement benefits by another state.....	21
Property exempt.....	21
Lien not created	21
Summary Analysis	21

Chapter 3	TEXAS RULES OF THE COURT	24
	I. <u>District and County Court</u>	24
	General Rules	24
	Computation of Time.....	24
	Service of process on Sunday (Excerpts)	25
	Statewide Certification to Serve Civil Process	25
	Writs and Process (Style)	31
	Officer/authorized person shall endorse all process.....	32
	Officer to execute process - no fee in advance - exception	32
	Filing & serving pleadings and motions	32
	Methods of service	32
	Citation	
	Issuance and form of citation.....	33
	Form	33
	Who may serve	33
	Duty of officer or person receiving process	34
	Method of service	34
	Corporation: President, any Vice President or Registered Agent	118
	Return of service of process	35
	Examples.....	35
	Defendant without state.....	36
	Service of process in foreign countries.....	36
	Citation by publication - Number of times to publish.....	36, 37
	Service of citation by publication	37
	Return of citation by publication	37
	Amendment of any process or service.....	37
	Cost and Security	
	Parties responsible	37
	Fee for execution of process in a civil case, demand.....	37
	Parties liable for other costs.....	37
	How Costs Collected	38
	Officer to levy	38
	Execution for costs	38
	II. <u>Rules of practice in Justice Courts</u>	
	Requisites of process	38
	Issuance and form of citation (excerpts).....	39
	Who may serve and method of service.....	39
	Duty of officer or person receiving & return of citation (excerpts)	40
	To enforce judgment - personal property.....	40
	Rules governing - generally same as county/district court	40
	Summary Analysis	41

Chapter 4	COURT COSTS	
	Fees set by commissioners court.....	46
	Service of process for Appellate Court	47
	Payment of costs incurred for care of certain property	47
	Summary Analysis	47
Chapter 5	PAPER TRAIL	
	Filing system	49
Chapter 6	EXECUTION OF JUDGMENTS	
	Issuance and Levy of Writ	
	No execution on dormant judgment.....	50
	Effect of plaintiff's death.....	50
	Effect of defendant's death	50
	Levy of property conveyed to third party	51
	Levy of property of surety.....	51
	Recovery of Seized Property	
	Recovery of property before sale.....	51
	Recovery of property after sale	51
	Sale	
	Sale at place other than courthouse door	51
	Sale of city lots.....	51
	Sale of rural property	52
	Stock shares subject to sale	52
	Persons eligible to purchase real property	52
	Conveyance of title after sale	53
	Purchaser considered innocent purchaser without notice	53
	Distribution of sale proceeds.....	53
	Purchases by officer void	54
	Duties and Liabilities of Executing Officer	
	Duty toward seized personalty, liability	54
	Duty of Successor officer	54
	Improper endorsement of Writ	54
	Improper return of Writ	54
	Failure to levy or sell	55
	Improper sale	55
	Failure to deliver money collected.....	55
	Rules Governing Actions under this Chapter	55
	Payment of Damages	55
	Right of Subrogation	55
	Duties of Executing Officer	56
	Timing of Execution and Return.....	56
	Transfer of Writ, no Duty to Levy Outside of County	56
	Officer's Surety	56

Wrongful Levy	57
Exclusive Levy	57
Enforcement of Judgments of other States	
Filing and status of foreign judgment	57
Fees	57
Enforcement of Judgments of other Countries	
Recognition and enforcement	58

Chapter 7 ANCILLARY PROCEEDINGS - WRITS & PROCESS

1.

ATTACHMENT

Civil Practice & Remedies Code.....	58
Attachment lien	60
Judgment and foreclosure.....	60
Works of fine art	60
Exemption when en route to or in exhibition	60
Handling and transportation	61
Texas Rules of the Court	61
Application for writ of attachment & order (excerpts).....	61
Writ of Attachment directed to sheriff/constable	62
Form of Writ	62
Delivery of Writ	63
Duty of Officer	63
Levy - how made	63
Service of Writ on defendant	63
Defendant may replevy (excerpt)	63
Sale of perishable property	64
To protect interest.....	64
Procedure for sale	64
Return of sale	65
Judge may make necessary orders	65
Return of Writ.....	65
Report of disposition of property	65
Amendment - Officers return	66
Examples.....	66

2.

SEQUESTRATION

Civil Practice & Remedies Code.....	68
Grounds	68
Pending suit required	68
Available for claim not due	68
Who may issue.....	68
Required statement of rights - defendant	68

	Officer’s liability and duty of care	69
	Compensation of Officer	69
	Indemnification of officer for money spent	69
Texas	Rules of the Court	70
	Requisites of Writ	70
	Amendment of officers return	70
	Service of Writ	70
	Defendant may replevy	71
	Bond for personal property	71
	Bond for real estate.....	71
	Return of bond and entry of judgment.....	71
	Defendant may return sequestered property	71
	Disposition of the property by officer	72
	Execution	72
	Plaintiff may replevy	72
	When bond forfeited.....	73
	Sale of perishable goods	73
	Order of sale for.....	73
	Return of order	73
	Sale on debt not due.....	73
	Purchaser’s bond	73
	Return of bond	74
	Recovery on bond.....	74
	Examples.....	74

3.

DISTRESS WARRANTS

Texas	Rules of the Court	74
	Requisites for distress warrant.....	74
	Service of distress warrant.....	75
	Defendant may replevy.....	75
	Dissolution or modification of distress warrant.....	75
	Sale of perishable property	76
	Sale to protect interest.....	76
	Procedure for sale	76
	Return of sale	77
	Citation for defendant and return.....	77
	Petition	77
	Examples.....	77

4.

EXECUTIONS

Texas Rules of the Court	78
Enforcement of judgment	78
Execution	78
Requisites of execution	78
Execution on judgment for money	79
Execution for sale of particular property	79
Execution for delivery of certain property	79
Execution for possession or value of personal property.....	79
Execution Superseded.....	79
Stay of Execution in Justice Court	79
Indorsement of execution by officer.....	80
Levy of Execution.....	80
Property not to be designated by the defendant	80
Levy - real estate - personal property	81
Levy on stock running at large	81
Levy on shares of stock.....	81
Levy on goods pledged or mortgaged	81
Defendant may give delivery bond	81
Property may be sold by the defendant	81
Forfeited delivery bond	82
Sale of real property	82
Notice of sale of real estate	82
“Courthouse Door” defined	83
Sale of personal property	83
Notice of sale of personal property.....	83
When execution not satisfied	83
Resale of property	83
Return of execution.....	84
Return by Mail	84
Examples.....	84

5.

GARNISHMENT

Texas Civil practice and Remedies Code.....	84
Grounds for Writ of garnishment	85
Who may issue Writ	85
Effect of service	85
Current wages exempt.....	85
Garnishment of funds in inmate trust fund.....	85
Financial institution as garnishee.....	86
Application for Writ of garnishment and order	86
Bond for garnishment.....	86

Case docketed	86
Form of Writ of Garnishment	87
Delivery of Writ	87
Execution and return of Writ	87
Service of Writ on defendant	87
Defendant may replevy	88
Judgment when garnishee is indebted	88
Judgment for effects	89
Refusal to deliver effects.....	89
Sale of effects	89
Docket and notice.....	89
Amendment - officers return	89
Examples.....	90

6.

INJUNCTION

Texas Rules of the Court	90
Granting an injunction.....	90
Citation	90
Requisites of Writ	91
Clerk to issue Writ.....	91
Service and return	91
Disobedience of injunction	91

Chapter 8	TURNOVER ORDER - JUDGMENTS.....	93
	Passage of Title.....	93
	Collection of judgment through court proceeding.....	93
	Authority of court to order turnover of wages.....	93
	Turnover by financial institution	94

Chapter 9	FORCIBLE ENTRY AND DETAINER.....	94
	Texas Property Code	94
	Forcible entry and detainer	94, 98
	Forcible detainer	94
	Jurisdiction	95
	Notice to vacate prior to filing eviction suit.....	95
	Writ of Possession	96
	Warehouseman’s lien	97
	Non-lawyer representation.....	98
	Texas Rules of the Court	98
	May sue for rent	98
	Citation	98
	Complainant may have possession	98
	Requisites of Complaint	99

	Service of citation.....	99
	Service by delivery to premises.....	99
	Docketed	100
	Demanding jury	100
	Only issue.....	100
	Representation by agents	100
	May appeal	100
	Pauper’s affidavit.....	101
	Writ of Possession	101
	Lien.....	101
	Landlord and tenant.....	101
Chapter 10	FINANCE CODE - JUDGEMENT INTEREST RATES	102
	Interest rate to be charged in judgment	102
	Judgment interest rate - Interest rate on time price differential <u>in contract</u> and <u>non-contract</u>	102
	Publication of judgment interest rate	103
	Accrual of judgment interest	103
	Compounding of judgment interest - post-judgment	103
	Judicial notice of judgment interest rate	103
Chapter 11	MANUFACTURED HOME TENANCIES	
	Texas property code (new law - effective 4-1-02).....	103
Chapter 12	TAX CODE - DELINQUENT TAX SALES	104
	Seizure of Personal Property	
	Property subject to seizure.....	104
	Institution of seizure	104
	Tax Warrant.....	105
	Bond for payment for taxes.....	105
	Tax sales - Notice; Method; Disposition of Proceeds.....	105
	Delinquent Tax Suits	
	Suit to collect delinquent tax.....	107
	Adjudged value.....	107
	Writ of Possession	107
	Order of Sale, Payment before sale.....	109
	Seizure of Real Property	
	Property subject to seizure by municipality.....	109
	Property subject to seizure by county	109
	Notice.....	110
	Institution of seizure	111
	Tax Warrant.....	111
	Notice of Tax Sale	112

Tax Sales	
Sale of property	112
Persons eligible to purchase real property	115
Distribution of Proceeds	117
Resale by Taxing Unit	
Resale by taxing unit.....	118
Distribution of proceeds of resale.....	119
Chapter 13 FORMS	120
These are provided sample forms, from the Honorable Tom Lawrence, Justice of the Peace, Precinct 4, place Two, Harris County, Texas, and the Texas Justice Training Center Desk Book, used in Civil Process, that are used in Justice Court. This information is provided so you may become familiar with these papers.	
You can also get copies of Civil Process Citation and Writs from the District and County Clerk.	
The following “Sample” forms are provided to you as follows: (See pages 122-131)	
1. Citation	
2. Writ of Execution on Judgment for Money	
3. Writ of Attachment	
4. Writ of Possession	
5. Writ of Garnishment	
6. Tenants Writ of Reentry	
7. Writ of Sequestration	
8. Citation to Defendant in Small Claims Court	
9. Writ of Citation - Forcible Detainer	
10. Writ of Citation - Small Claims Court	
Chapter 14 ATTORNEY GENERAL OPINIONS	132
GA-0140	Execution of tax warrants and property seizure and sale under Chapter 33, Tax Code.
JM-1046	Commissioners courts may set reasonable fees for services performed by sheriff and constables in unsuccessful attempts to serve civil process.
Chapter 15 CORPORATION	121
TOPICAL INDEX	147

CIVIL PROCESS

The purpose of this manual is to help identify those civil processes that are used most often by the sheriff or deputy sheriff, setting out the duties assigned to them by the statutes, rules, case law, and attorney general opinions. It is hoped that this material will be helpful to the Sheriff and his Deputies, in carrying out their duties in serving civil process, as well as, an instructor conducting a class in Civil Process.

The Texas Commission on Law Enforcement Officers Standards and Education have approved several civil process correspondent courses that an officer might take for credit. If you have an interest in obtaining credit you may contact the Commission at **1-512-936-7700** or their website, www.tcleose.state.tx.us, for further information.

CONCEPT

Civil Process is like a game. It is difficult, but you must know the rules in order to be confident and successful. **For example: If you play baseball, the rules are; 4 balls-you walk; 3 strikes-you are out. By the same token if you are presented with a writ or a process, you follow the rules and do what the court has ordered you to do. You take the court order and apply it to the rules of civil process and proceed. If you don't follow the rules you are out. It cannot be said to often; you must know the rules in order to be successful. Although it takes time to study the statutes, rules, case law, and attorney general opinions it will pay dividend in the long run knowing that you know how to served civil process promptly and properly.**

GENERAL COMMENTS

It should be remembered that before you become involved in serving civil papers several things must happen. (1) The individual or his attorney must file a claim or demand. (2) The court must issue a citation or appropriate civil process addressed to the defendant. (3) The citation or other appropriate civil process must be served on the defendant by the sheriff, constable or other person as designated by the rules of civil procedure and rules of the Supreme Court of Texas.

Processing civil process papers is one of the more important duties assigned to the sheriff by law. It requires study and training. The liabilities of the sheriff, or constable, and their deputies in processing civil papers is breathtaking. The processing of civil papers requires knowledge, hard work and dedication. This is not a beginner's job or a place for someone who can't perform at other tasks.

More than one person in the office should know how to carry out these duties. Service of writs, execution and other processes should be done in a courteous and polite manner. When asked by the person being served what the papers are all about, it is suggested that the process server advise the defendant that he does not know what all the legal ramification are in the papers, and that the defendant might want to discuss this matter with an attorney for a full explanation and advice. If necessary, the process server might explain to the defendant that he is required by law to deliver the papers to him/her.

It will never fail that a situation will come up concerning the service of process and you will have no idea how to handle it. Stop, take a deep breath, use common sense and if you can't figure out what to do then call someone for help. This might be your legal advisor, a fellow civil process server from another county, your instructor or your Association. No body has all the answers.

It is the duty of the County Attorney, District Attorney or the Criminal District Attorney (legal advisor) to provide legal opinions and advice, in writing if requested, to the sheriff when there are questions concerning their official duties of office. (41.007 - Government Code) If there is any question or concern in serving a particular civil process the sheriff or deputy should contact their legal advisor for direction and clarification as how to proceed and/or plaintiff's attorney.

In the event of a law suit against the sheriff/deputy the sheriff should immediately contact his *county attorney* and give him the papers served on him. The legal advisor will be representing the sheriff and or his deputies in most instances. (157.901 Local Government Code)

LIABILITY OF SHERIFF/DEPUTY

CIVIL PRACTICE & REMEDIES CODE

7.001 - Liability for Refusal or Neglect in Performance of Official Duties

- (a) A clerk, **sheriff**, or other officer who neglects or refuses to perform a duty required under Title 42, Revised Statutes, or under a provision of this Code derived from that title is liable for damages in a suit brought by a person injured by the officer's neglect or refusal.
- (b) The officer may be punished for contempt of court for neglect or refusal in performance of those duties.

7.002 - Liability for Deposits Pending Suit (Excepts)

- (a) An officer who has custody of a sum of money, a debt, an instrument, or other property paid to or deposited with a court pending the outcome of a cause of action shall seal the property in a secure package in a safe or bank vault that is accessible and subject to the control of the court.
- (b) The officer shall keep in his office as part of his records an itemized inventory of property deposited with the court. The inventory must list the disposition of the property and the account for which the property was received.
- (c) At the expiration of the officer's term, the office shall transfer all deposited property and the inventory to the officer's successor in office. The successor shall give a receipt for the transferred property and the inventory.
- (d) - - - -

7.003 - Liability Regarding Execution of Writs

- (a) Except as provided by Section 34.061, an officer is not liable for damages resulting from the execution of a writ issued by a court of this state if the officer:
1. in good faith executes the writ as provided by law and by the Texas Rules of Civil Procedures; and
 2. use reasonable diligence in performing his official duties.
- (b) An officer shall execute a writ issued by a court of this state without requiring that bond be posted for the indemnification of the officer.

7.021 - Suit on Official Bonds

Suit may be brought in the name of this state alone on an official bond for the benefit of all the parties entitled to recover on the bond if:

1. the bond is made payable to this state or to an officer of this state; and
2. a recovery on the bond is authorized by or would inure to the benefit of parties other than this state.

It is mandated by statute that the sheriff shall execute all process and precepts directed to the sheriff by legal authority and shall return the process or precept to the proper court on or before the date the process or precept is returnable. The writ must be served and returned promptly. **(This does not mean that the sheriff is the only person that can serve civil process but only when directed to the sheriff by legal authority. The sheriff commits an offense if the sheriff fails to return a process or precept or makes a false return and is subject to a fine of not more than \$100. The sheriff is liable for all damages sustained by a person by reason of an offense committed by the sheriff. (85.021, Local Government Code)**

The sheriff is mandated by statute to execute subpoenas and other process directed to the sheriff that are issued by the speaker of the house of representatives, the president of the senate, or the chairman of a committee of either house of the legislature. **Failure to execute the subpoena or other process carries the same penalties as failure to execute process issued by the court. (85.022, Local Government Code)**

Failure to execute all process and precepts received by the sheriff, in a timely manner, may lead to removal from office. (87.011 Local Government Code)

It should be remembered that when a sheriff appoints a deputy or a reserved deputy sheriff that the sheriff is **responsible for the official acts of his deputy**. Thus when a sheriff appoints a deputy to serve civil process, the sheriff is responsible for any mistakes or omissions made by the deputy. (85.03 (d), Local Government Code)

It is important that the sheriff/deputies that will be charged with the responsibility of serving civil process attend training seminars annually on civil process, on a regular basis, in order to upgrade their skills and knowledge.

In order to be proficient as a civil process server you must know what the statutes, case law, rules and attorney general opinions say about the subject matter. Attorney General opinions

may be found on the internet at www.oag.state.tx.us.

You cannot effectively carry out these duties without having access to the statutes, case law, rules, and attorney general opinions.

It is suggested that you have the following paper bound statutes, codes and rules, be immediately accessible, in order to be more efficient in carrying out your duties. These books could be purchased by the sheriff through the funds allocated for training.

1. Texas Local Government Code
2. Texas Property Code
3. Texas Civil Practice and Remedies Code
4. Texas Rules of the Court
5. Texas Juris 3d, Vol. 59 - Police, Sheriff, and Constables
6. Access to the Black Statutes and Southwestern reporter, (County law library. See your legal advisor)

These paper bound books may be purchased from the West Group. For information on prices or other information call 1-800-328-4880 or on internet at www.westgroup.com.

It is important that you know all of the rules and how to apply them. Once you have become comfortable with understanding the rules you will find that when ever a situation arises in performing the duties you will have more confidence in what you do. Remember you must do what you think is right regardless what the plaintiff's or defendant's attorney thinks you should do. It is suggested that if there are questions about the process that you are serving that you contact plaintiff's attorney, as well as, your county legal advisor for their thoughts. The plaintiff's and defendant's attorney, as well as, your county legal advisor, are officers of the Court. **When in doubt always get the attorney to furnish you something in writing on their stationary or send it to you by fax on their stationary.** This way there will be no doubt as to what information and instructions the attorney has given you.

The Commission on Law Enforcement Officers Standards and Education will allow credit on all Civil Process courses taken by the peace officer, and passed, if the courses have been approved by the Commission.

The sheriff and his deputies may serve civil process if directed to them. You are not a **JUDGE OR A LAWYER.** It is not your job to question the judgments and orders of the court, unless there appears to be an error, but to follow the orders of the court in a timely manner. It is suggested if you find an error, in the process sent to you, that you talk to the clerk of the court that issued the process and/or the attorney or person that delivered the process to you and discuss your concerns with them. **When in doubt never hesitate to ask for help.**

CIVIL PROCESS GLOSSARY

The following are the most common terms used in civil process and definitions of Writs and enforcement document as set out in The Commission on Law Enforcement Officers Standards and Education curriculum and, rather than reinvent the wheel, they are as follows:

ALTERNATIVE SERVICE	A METHOD OF DELIVERING TO AN UN-COOPERATIVE DEFENDANT.
ANSWER	A DEFENDANT'S WRITTEN REPLY TO A PLAINTIFF'S PETITION.
APPLICANT	A PARTY MAKING APPLICATION TO THE COURT OR PETITIONING THE COURT FOR SOME ACTION.
BENCH WARRANT & CAPIAS	A WRIT ISSUED TO AN OFFICER COMMANDING THAT SPECIFIC PERSON BE TAKEN INTO CUSTODY AND BROUGHT BEFORE THE COURT IMMEDIATELY OR AT A SPECIFIC TIME AND PLACE. BENCH WARRANT IS ISSUED BY AND SIGNED BY A JUDGE. CAPIAS IS IN MOTION FORM AND ISSUED BY A CLERK OF THE COMPETENT COURT.
CITATION	AN OFFICIAL NOTICE FROM A COURT OF COMPETENT JURISDICTION, ISSUED TO A DEFENDANT AFTER A PLAINTIFF'S PETITION IS FILED; THE CITATION COMMANDS THE DEFENDANT TO ANSWER & APPEAR IN COURT AT A SPECIFIC TIME.
CONTEMPT	PROCEEDINGS HELD TO DETERMINE WHETHER A PERSON HAS VIOLATED A LAWFUL COURT ORDER AND TO SET PUNISHMENT IF VIOLATION IS FOUND. WHERE AN OFFICER REFUSES TO CARRY OUT LAWFULLY IMPOSED DUTIES, REFUSAL IS PUNISHABLE AS A CONTEMPT.
DEFAULT JUDGMENT	THE FAILURE TO PERFORM SOME ACTION REQUIRED BY LAW WITHIN THE SPECIFIED TIME. IN A CIVIL LAWSUIT, JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST A PARTY WHO HAS FAILED TO ANSWER OR APPEAR AS DIRECTED.

DILIGENCE EFFORT

PERSISTENT ACTIVITY, PRUDENCE OR CARE; "DILIGENT EFFORT" IS THAT WHICH IS PROPERLY EXPECTED FROM A REASONABLE AND PRUDENT PERSON UNDER THE PARTICULAR CIRCUMSTANCES.

INSTANTER

IMMEDIATE, NOW OR INSTANTLY.

JUDGMENT

THE FINAL ORDER OF A COURT IN A CIVIL SUIT WHICH SETTLES ALL DISPUTED ISSUES, DETERMINES THE RIGHTS OF THE PARTIES WITH REGARDS TO THE SUBJECT MATTER OF THE SUIT, AND WHICH IS SUBJECT TO BEING ENFORCED BY A WRIT.

JURISDICTION

THE POWER OF A COURT TO LAWFULLY ACT WITH REGARD TO PERSONS AND PROPERTY.

**ORDERS
(ALSO KNOWN AS WRITS)**

THE DIRECTIONS OF A COURT OR JUDGE: A MANDATE OR COMMAND.

PETITION

A DOCUMENT FILED BY THE PLAINTIFF WITH THE CLERK OF THE COURT WHICH OUTLINES THE BASIS OF THE COMPLAINT AGAINST THE DEFENDANT AND THE RELIEF BEING SOUGHT FROM THE COURT.

PLAINTIFF

A PARTY IN A CIVIL SUIT, MAINLY THE ONE WHO INITIATES THE SUIT BY FILING A PETITION.

PROCESS

ALL WRITS AND OFFICIAL DOCUMENTS ISSUED BY COURTS IN CONNECTION WITH PENDING SUITS.

RESPONDENT

ALSO KNOWN AS THE DEFENDANT.

RETURN

THE ENDORSEMENT MADE BY A SHERIFF OR CONSTABLE UPON PROCESS. WRIT OR NOTICE STATING WHAT HAS BEEN ACCOMPLISHED, AND THE TIME AND MODE OF SERVICE.

SERVICE

THE DELIVERY OF A WRIT, NOTICE,

INJUNCTION, ETC. BY AN AUTHORIZED PERSON, TO A PERSON WHO IS THEREBY OFFICIALLY NOTIFIED OF SOME PROCEEDING CONCERNING HIM.

SHOW CAUSE

A NOTICE TO THE DEFENDANT TO EITHER APPEAR IN COURT OR PREPARE A WRITTEN ANSWER TO SHOW CAUSE FOR FAILING TO RESPOND TO A PREVIOUS ORDER OF THE COURT. MAY ALSO BE KNOWN AS A NOTICE.

STYLE OR FORMAT

THE PRESCRIBED STRUCTURE FOR THE CLERKS OF THE COURT TO USE IN DEVELOPING THE PROCESS.

WRIT

EXAMPLES OF WRITS:
EXECUTION, POSSESSION, GARNISHMENT, SEQUESTRATION, ATTACHMENT, INJUNCTION, ETC.

LATIN TERMS

ET AL

AND ALL OTHERS

EX PARTE

ANY PROCEEDING WHICH IS HELD FOR THE BENEFIT OF, OR ON APPLICATION OF, ONLY ONE PARTY, IN THE ABSENCE OF ONE PARTY.

IN RE

IN THE INTEREST OF

NULA BONA

NO GOODS OR NO FUNDS

PRO BONO

NO FEE, USUALLY WORK PROVIDED BY ATTORNEY AT NO COST.

PRO SE

REPRESENTING ONES SELF IN AN ACTION

DEFINITIONS OF WRITS AND ENFORCEMENT DOCUMENTS

ABSTRACT OF JUDGMENT

A COMPLETE HISTORY IN SHORT, ABBREVIATED FROM OF THE CASE AS FOUND IN THE RECORD, WHICH WHEN FILED WITH THE COUNTY CLERK CREATES A JUDGMENT LIEN OR REAL ESTATE OF

THE DEFENDANT.

ATTACHMENT

A PROCEDURE OR WRIT WHICH MAY BE USED TO BRING A PERSON OR PROPERTY INTO THE CUSTODY OF THE COURT.

CONTEMPT OF COURT

PROCEEDINGS HELD TO DETERMINE WHETHER A PERSON HAS VIOLATED A LAWFUL COURT ORDER AND TO SET PUNISHMENT IF VIOLATION IS FOUND. WHERE AN OFFICER REFUSES TO CARRY OUT LAWFULLY IMPOSED DUTIES, REFUSAL IS PUNISHABLE AS CONTEMPT.

DISTRESS WARRANT

A WRIT ISSUED BY A JP COURT DIRECTING THE SEIZURE OF A TENANT'S PROPERTY FOR FAILURE TO PAY RENT AS DUE.

EXECUTION

A PROCESS AND WRIT ISSUED BY A COURT

ORDER OF SALE

TO ENFORCE AND COLLECT MONEY UPON DEMAND ON A JUDGMENT BY THE SEIZURE AND SALE OF NON-EXEMPT PROPERTY.

GARNISHMENT

A WRIT AND PROCESS DIRECTED TO ONE WHO HAS MONEY OR PROPERTY IN HIS POSSESSION BELONGING TO THE DEFENDANT, ORDERING SUCH THIRD PERSON NOT TO DELIVER OR PAY IT TO THE DEFENDANT BUT TO DELIVER OR HOLD IT FOR PLAINTIFF OR AS DIRECTED BY THE COURT.

INJUNCTION

A WRIT ISSUED BY A COURT WHICH DEMANDS OR PROHIBITS SPECIFIED ACTIONS.

**POSSESSION
NOT IN THE EVICTION
PROCESS**

A WRIT EMPLOYED TO ENFORCE A JUDGMENT TO RECOVER POSSESSION OF REAL OR PERSONAL PROPERTY.

REENTRY

THE ACT BY MEANS OF A WRIT RETURNING THE POSSESSION OF LAND OR TENEMENTS (RENTAL PROPERTY) TO THE TENANT AFTER A LANDLORD HAS WRONGLY LOCKED THE TENANT OUT OF THE PREMISES.

RESTRAINING ORDER

AN ORDER TO THE DEFENDANT(S)
PROHIBITING HIM FROM DOING AN ACT
PROHIBITED IN THE ORDER UNTIL A
FORMAL HEARING CAN BE CONDUCTED.

SEQUESTRATION

AN ORDER DIRECTING THE SHERIFF OR
CONSTABLE TO TAKE INTO HIS POSSESSION
CERTAIN PROPERTY OF WHICH ANOTHER
PERSON HAS POSSESSION UNTIL THE SUIT
CAN BE DECIDED OR AS THE COURT
DIRECTS.

CHAPTER 1

HOMESTEAD

**PROPERTY EXEMPT FROM CREDITORS CLAIMS
TEXAS PROPERTY CODE**

41.001 -Interest in Land Exempt from Seizure

- (a) homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claim of creditors except for encumbrances properly fixed on homestead property.
- (b) Encumbrances may be properly fixed on homestead property for:
 - 1. Purchase money;
 - 2. Taxes on the property;
 - 3. Work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254 (a)(b) and (c);
 - 4. An owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition. Including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding; or
 - 5. The refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses if the homestead is a family homestead, or from the tax debt of the owner.
 - 6. An extension of credit that meets the requirements of Section 50(a)(6), Article XVI, Texas Constitution.
 - 7. A reverse mortgage that meets the requirements of Sections 50(k)-(p), Article XVI, Texas Constitution.
- (c) The homestead claimant's proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale.

41.002 -Definition of Homestead

- (a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.
- (b) If used for the purposes of a **rural** home, the homestead shall consist of:
 - 1. For a **family**, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or
 - 2. For a **single, adult person**, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.
- (c) A homestead is considered to be **urban** if at the time the designation is made, the property is:
 - 1. Located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and
 - 2. Served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:
 - A. Electric;
 - B. Natural gas;
 - C. Sewer;
 - D. Storm sewer; and
 - E. Water
- (d) The definition of a homestead as provided in this section applies to all homesteads in this state when ever created.

41.003 - Temporary Renting of a Homestead

Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.

41.004 - Abandonment of a Homestead

If a homestead claimant is married, a homestead cannot be abandoned without the consent of the claimant's spouse.

41.005 - Voluntary Designation of Homestead

- (a) If a rural homestead of a family is part of one or more parcels containing a total of more than 200 acres, the head of the family and, if married, that person's spouse may voluntarily designate not more than 200 acres of the property as the homestead. If a rural homestead of a single adult person, not otherwise entitled to a homestead, is part of one or more parcels containing a total of more than 100 acres, the person may voluntarily designate not more than 100 acres of the property as the homestead.

- (b) If an urban homestead of a family, or an urban homestead of a single adult person not otherwise entitled to a homestead is part of one or more contiguous lots containing a total of more than 10 acres, the head of the family and, if married, that person's spouse or the single adult person, as applicable, may voluntarily designate not more than 10 acres of the property as the homestead.
- (c) Except as provided by Subsection (e) or Sub-chapter B, to designate property as a homestead, a person or persons, as applicable, must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person or persons must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:
 - (1) a description sufficient to identify the property designated;
 - (2) a statement by the person or persons who executed the instrument that the property is designated as a homestead of the person's family or as the homestead of a single adult person and not otherwise entitled to a homestead;
 - (3) the name of the current record titleholder of the property; and
 - (4) for a rural homestead, the number of acres designated and, if there is more than one survey the number of acres in each.
- (d) a person or persons, as applicable may change the boundaries of a homestead designated under Sub-section (c) by executing and recording an instrument in the manner required for a voluntary designation under this subsection. A change under this subsection does not impair rights acquired by a party before the change.
- (e) Except as otherwise provided by this subsection, property on which a person receives an exemption from taxation under Section 11.43, Tax Code, is considered to have been designated as the person's homestead for the purposes of this subchapter if the property is listed as the person's residence homestead on the most recent appraisal roll for the appraisal district established for the county in which the property is located. If a person designates property as a homestead under Subsection (c) or Subchapter B and a different property is considered to have been designated as the person's homestead under this subsection, the designation under Subsection (c) or Subchapter B, as applicable, prevails for purposes of this chapter.
- (f) If a person or persons, as applicable, have not made a voluntary designation of a homestead under this section as of the time a writ of execution is issued against the person, any designation of the person's or persons' homestead must be made in accordance with Subchapter B.
- (g) An instrument that made a voluntary designation of a homestead in accordance with prior law and that is on file with the county clerk on September 1, 1987, is considered a voluntary designation of a homestead under this section.

41.008 - Conflict with Federal Law

To the extent of any conflict between this subchapter and any federal law that imposes an upper limit on the amount, including the monetary amount or acreage amount, of homestead property a person may exempt from seizure, this subchapter prevails to the extent allowed under federal law.

DESIGNATION OF A HOMESTEAD IN AID OF ENFORCEMENT OF A JUDGMENT DEBT

41.021 - Notice to Designate

If an execution is issued against a holder of an interest in land of which a homestead may be a part and the judgment debtor has not made a voluntary designation of a homestead under Section 41.005, the judgment creditor may give the judgment debtor notice to designate the homestead as defined in Section 41.002. The notice shall state that if the judgment debtor fails to designate the homestead within the time allowed by Section 41.022, the court will appoint a commissioner to make the designation at the expense of the judgment debtor.

41.022 - Designation by Homestead Claimant (Excerpt)

At any time before 10 a.m. on the Monday next after the expiration of 20 days after the date of service of the notice to designate, the judgment debtor may designate the homestead as defined in Section 41.002 by filing a written designation, signed by the judgment debtor, with the justice or clerk of the court from which the writ of execution was issued, together with a plat of the area designated.

41.023 - Designation by Commissioner

- (a) If a judgment debtor who has not make a voluntary designation of a homestead under Section 41.005 does not designate a homestead as provided in Section 41.022, on motion of the judgment creditor, filed within 90 days after the issuance of the writ of execution, the court from which the writ of execution issued shall appoint a commissioner to designate the judgment debtor's homestead. - - - - (b) & (c) - - - -

41.024 - Sale of Excess

An officer holding an execution sale of property of a judgment debtor whose homestead had been designated under this chapter may sell the excess of the judgment debtor's interest in land not included in the homestead.

SUMMARY ANALYSIS

HOMESTEAD

TEXAS PROPERTY CODE

1. A civil processor cannot seize and sell land nor can he seize and sell one or more lots used for a place of burial of the dead that has been designated as a homestead except for encumbrances expressly fixed on homestead property.

Those encumbrances are:

- (a) Purchase money
- (b) Taxes on the property
- (c) Work and material used in constructing improvements on the property, contracted in writing and filed with the county clerk in the county which the property is located.
- (d) Partition or division due to divorce proceedings

2. Proceeds of sale of homestead are not subject to seizure until six months after the date of sale.

HOMESTEAD - DEFINITION

URBAN

(a) Used as a home and/or both a home and a place to exercise a calling or business.

1. Family or a single, adult person not entitled to a homestead - may have not more than 10 acres of land which may be in one or more contiguous lots, with improvements.

(b) To determine if the property is a urban homestead it must at the time of designation meet the following criteria:

1. Located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision: and

2. Served by police protection, paid volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

- Electric
- Natural gas
- Sewer
- Storm sewer
- Water

3. The definition of an urban homestead applies to all homesteads in this state when ever created.

RURAL HOMESTEAD

1. Rural Homestead of a family - part of one or more parcels of land not to exceed 200 acres.
2. If head of the family and if married, they have more than 200 acres of land, they may voluntarily designate not more than 200 acres of the property as the homestead.
3. Single person, not otherwise entitled to a homestead, may have part of one or more parcels containing a total of not more than 100 acres of land.
4. If single person has more than 100 acres of land the single person may voluntarily designate not more than 100 acres of the property as the homestead.

If an execution is issued against a holder of an interest in land of which a homestead may be a part and judgment debtor has not made a voluntary designation of a homestead the judgment creditor may give the judgment notice to the judgment debtor to designate the homestead and if he doesn't designate the homestead then at any time before 10 am on the Monday next after the expiration of 20 days after the date of service of the notice to designate, the judgment creditor can apply to the court to appoint a Commissioner to designate the homestead for the judgment debtor. If the judgment debtor designates the homestead it must be in writing and signed by the judgment debtor and filed with the justice or clerk of the court from which the writ of execution was issued, together with a plat of the area designated.

An officer holding an execution sale of property after the homestead has been designated may sell the excess of the judgment debtors interest not included in the homestead.

NOTE: Under Texas law, "family," for purposes of exemptions statutes, may include even relationships between adult children and their parents. In re Finkel, Bkrcty. W.D. Tex.1993, 151B.R. 779.

"Family", needed to establish homestead exemption, requiring legal or moral responsibility on head of family for rest of members of family, and corresponding dependence on others upon heads of family. NCNB Texas Nat. Bank v. Carpenter. 849 SW 875.

See Art. 16, Para. 50 and 51, Texas Constitution

VOLUNTARY DESIGNATION OF HOMESTEAD

URBAN

If an urban homestead of a family is part of one or more contiguous lots containing a total of more than 10 acres, the head of the family and, if married, that person's spouse may voluntarily designate not more than 10 acres of the property as a homestead. **The land not designated as a urban homestead is subject to seizure.**

If an urban homestead of a single, adult person, not otherwise entitled to a homestead, is part of one or more contiguous lots containing a total of more than 10 acres of land may voluntarily designate not more than 10 acres of the property as a homestead. **The land not designated as a urban homestead is subject to seizure**

RURAL

If a family, who has a rural homestead that contains a total of more than 200 acres of land, the head of the family, and if married, that persons spouse may voluntarily designate not more than 200 acres of land as a homestead. **The land not designated as a rural homestead is subject to seizure.**

If a single, adult person, who has a rural homestead that contains a total of more than 100 acres of land, and not otherwise entitled to a homestead, may voluntarily designate not more than 100 acres of property as the homestead. **The land not designated as a rural homestead is subject to seizure.**

NOTE - TO PROCESS SERVER

If defendant has more land than allowed by the homestead and voluntarily designates the homestead interest you may proceed to seize the land that is not designated as the homestead.

If defendant has more land than allowed by the homestead and refuses to voluntarily designate the homestead interest you should make your return that you are unable to determine what property is not the homestead subject to execution. Plaintiff's attorney may go to the court that issued the writ and ask the court to proceed under Section 41.021, 41.022, 41.023 and 41.024 Texas Property Code and ask the court:

1. To issue a notice to the holder of the land to designate the homestead interest, and if there is no designation of the homestead by the holder of the land the court will appoint a commissioner to make the designation at defendants (judgment debtors) expense.
2. The defendant (judgment debtor) at any time before 10 am the Monday next after the expiration of 20 days after the date of

service of the notice to designate, the defendant may designate the homestead as defined in 41.002 Texas Property Coded by filing a written designation, signed by the defendant, with the justice or clerk of the court from which the writ of execution was issued, together with a plat of the area designated.

3. If defendant (judgment debtor) who has not made a voluntary designation of a homestead under Section 41.005 or does not designate a homestead as provided in Section 41.022, on motion by the judgment creditor, filed within 90 days after the issuance of the writ of execution, the court from which the writ execution issued shall appoint a commissioner to designate the judgment debtor's (defendant's) homestead.
4. Officer (Process Server) holding an execution sale of property of a judgment debtor (defendant) whose homestead has been designated under this chapter may sell the excess of land not included in the homestead.

EXAMPLES

1. The temporary renting of a homestead does not change the character of the homestead and any rents that are derived therefrom are not protected by the homestead law and are subject to seizure. *Texas Commerce Bank Irving v. McCreary*, 677 SW 2d 643.
2. Growing crops are protected by the homestead exemption from seizure. After crops are harvested they no longer enjoy the protection of the homestead exemption and are subject to execution. *McIntyre v. Oliver Motor Co.*, 20 SW2d 241.
3. Oil, gas, and other minerals are considered a part of the land and thus exempted from seizure. Once oil, gas or other minerals are taken from the land they lose their protection of the homestead exemption and are subject to seizure. 43 Tex. Juris 3rd 405.
4. If homestead property is destroyed and there is insurance on this property the proceeds are not subject to seizure until 6 months after the owner had the right to claim the insurance proceeds, unless the lien-holder's claim rest on a contractual basis. *Home Improvement Loan Co. v. James Brewer, et ux*, 318 SW2d 673.
5. A person claiming homestead rights in property pursuant to Tex. Const. Art. XVI Sec. 50 has the burden of proving both overt acts of homestead usage and intent to claim the land as a homestead. *First Gibraltar Bank, FSB v. Morales*, 115 S. Ct. 204.
6. Homeowners are subject to liens to secure the payment of maintenance assessments provided for in the subdivision's declaration of covenants and restrictions, and an order of foreclosure to collect the sums due would have been proper, where the restrictions were placed on the land before it became the homestead of the parties (the liens having been contracted for several years before the homeowners took possession of their houses), and where the restrictions contained valid contractual liens which ran with the land. *Inwood North Homeowners' Asso. v.*

Harris, 736 SW2d 632.

7. Where a bankrupt homeowner sought to exempt both his homestead and the proceeds from the sale of his former homestead under Property Code Sec. 41.001, the proceeds the homeowner received was not entitled to take both exemptions simultaneously because the former homestead loses its homestead character when the owner abandons it by acquiring another homestead and therefore the proceeds from the former homestead are no longer exempt. Re England, 975 F2d 1168.

CHAPTER 2

PERSONAL PROPERTY EXEMPTIONS TEXAS PROPERTY CODE

42.001- Personal Property Exemption

(a) Personal property, as described in Section 42.002, is exempt from garnishment attachment, execution or other seizure if:

- (1) the property is provided for a family and has an aggregate fair market value of not more than \$60,000, exclusive of the amount of any liens security interests or other charges encumbering the property; or
- (2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than \$30,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.

(b) The following personal property is exempt from seizure and is not included in the aggregate limitations prescribed by Subsection (a):

- (1) current wages for personal services, except for the enforcement of court-ordered child support payments;
- (2) professionally prescribed health aids of a debtor or a dependent of a debtor;
- (3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor;

and

- (3) a religious bible or other book containing sacred writings of a religion that is seized by a creditor other than a lessor of real property who is exercising the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for or abandons the real property.

(c) Except as provided by Subsection (b)(4) this section does not prevent seizure by a secured creditor with a contractual landlord's lien or other security in the property to be seized.

(d) Unpaid commissions for personal services not to exceed 25 percent of the aggregate limitations prescribed by Subsection (a) are exempt from seizure and are included in the aggregate.

(e) A religious bible or other book described by Subsection (b)(4) that is seized by a lessor of real property in the exercise of the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for the real property or abandons the real property may not be included in the aggregate limitations prescribed by Subsection (a).

42.002 - Personal Property

(a) The following personal property is exempt under Section 42.001(a):

1. Home furnishings, including family heirlooms;
2. Provisions for consumption;
3. Farming or ranching vehicles and implements;
4. Tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
5. Wearing apparel;
6. Jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);
7. Two firearms;
8. Athletic and sporting equipment, including bicycles;
9. A two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of the family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person.
10. The following animals and forage on hand for their consumption:
 - A. Two horses, mules, or donkeys and a saddle, blanket, and bridle for each;
 - B. 12 head of cattle;
 - C. 60 head of other types of livestock; and
 - D. 120 fowl and
11. Household pets

(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code, or Subchapter F, Chapter 501, Transportation Code, or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.

42.0021 - Additional Exemption for Retirement Plan

(a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, and under any annuity or similar contract purchased with assets distributed from that type of plan, and under any retirement annuity or account described by Section 403(b) or 408A of the Internal Revenue Code of 1986 (USCA), and under any individual retirement account or any individual retirement annuity, including a simplified employee pension plan, and under any health savings account described by Section 223 of the Internal Revenue Code of 1986, is exempt from attachment, execution, and seizure for the satisfaction of debts unless the plan, contract, or account does not qualify under the applicable provisions of the IRS Code 1986. A person's right to the assets held in or to receive payments, whether vested or not, under a government or church plan or contract is also exempt unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the Federal Employee Retirement Income Security Act of 1974. If this subsection is held invalid or preempted by

federal law in whole or in part or in certain circumstances, the subsection remains in effect in all other respects to the maximum extent permitted by law.

(b) Contributions to an individual retirement account, other than contributions to a Roth IRA described in Section 408A, Internal Revenue Code of 1986, or annuity that exceed the amounts deductible under the applicable provisions of the Internal Revenue Code of 1986 and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law. Amounts qualifying as nontaxable rollover contributions under Section 402(a)(5), 403(a)(4), 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts treated as qualified rollover contributions under Section 408A, Internal revenue code of 1986, are treated as exempt amounts under Subsection (a). In addition, amounts qualifying as nontaxable rollover contributions under Section 402(c), 402(e)(6), 402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10), 408(d)(3), or 408A of the Internal Revenue Code of 1986 on or after January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts qualifying as nontaxable rollover contributions under Section 223(f)(5) of the Internal Revenue Code of 1986 on or after January 1, 2004, are treated as exempt amounts under Subsection (a).

(c) Amounts distributed from a plan or contract entitled to the exemption under Subsection (a) are not subject to seizure for a creditor's claim for 60 days after the date of distribution if the amounts qualify as a nontaxable rollover contribution under Subsection (b).

(d) A participant or beneficiary of a stock bonus, pension, profit-sharing, retirement plan, or government plan is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the plan to secure a loan to the participant or beneficiary from the plan, and the right to the assets held in or to receive payments from the plan is subject to attachment, execution and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

(e) If Subsection (a) is declared invalid or preempted by federal law, in whole or in part or in certain circumstances, as applied to a person who has not brought a proceeding under Title II, United States Code, the subsection remains in effect, to the maximum extent permitted by law, as to any person who has filed that type of proceeding.

(f) A reference in this section to a specific provision of the Internal Revenue Code of 1986 includes a subsequent amendment of the substance of that provision.

42.0022 - Exemption for College Savings Plan

(a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or receive payments or benefits under any of the following is exempt from attachment, execution and seizure for the satisfaction of debts:

(1) any fund or plan established under Subchapter F, Chapter 54, Education Code, including the person's interest in a prepaid tuition contract;

(2) any fund or plan established under Subchapter G, Chapter 54, Education Code, including the person's interest in a saving trust account; or

(3) any qualified tuition program of any state that meets the requirements of Section 529,

Internal Revenue Code of 1986, as amended.

(b) If any portion of this section is held to be invalid or preempted by federal law in whole or in part or in certain circumstances, this section remains in effect in all other respects to the maximum extent permitted by law.

42.003 - Designation of Exempt Property

(a) If the number or amount of a type of personal property owned by a debtor exceeds the exemption allowed by Section 42.002 and the debtor can be found in the county where the property is located, the officer making a levy on the property shall ask the debtor to designate the personal property to be levied on. If the debtor cannot be found in the county or the debtor fails to make a designation within a reasonable time after the officer's request, the officer shall make the designation.

(b) If the aggregate value of a debtor's personal property exceeds the amount exempt from seizure under Section 42.001(a), the debtor may designate the portion of the property to be levied on. If, after a court's request, the debtor fails to make a designation within a reasonable time or if for any reason a creditor contests that the property is exempt, the court shall make the designation.

42.004 - Transfer of Nonexempt Property

(a) If a person uses the property not exempt under this chapter to acquire, obtain an interest in, make improvements to, or pay an indebtedness on personal property which would be exempt under this chapter with the intent to defraud, delay, or hinder an interested person from obtaining that to which the interested person is or may be entitled, the property, interest, or improvement acquired is not exempt from seizure for the satisfaction of liabilities. If the property, interest, or improvement is acquired by discharging an encumbrance held by a third person, a person defrauded, delayed, or hindered is subrogated to the rights of the third person.

(b) A creditor may not assert a claim under this section more than two years after the transaction from which the claim arises. A person with a claim that is unliquidated or contingent at the time of the transaction may not assert a claim under this section more than one year after the claim is reduced to judgment.

(c) It is a defense to a claim under this section that the transfer was made in the ordinary course of business by the person making the transfer.

42.005 - Child Support Liens

Sections 42.001, 42.002, and 42.0021 of the code do not apply to a child support lien established under Subchapter G, Chapter 157, Family Code.

43.001 - Exempt Public Library Property

A public library is exempt from attachment, execution and forced sale.

43.002 - Exempt Property - State

The real property of the state, including the real property held in the name of state agencies and funds, and the real property of a political subdivision of the state are exempt from attachment, execution and forced sale. A judgment lien or abstract of judgment may not be filed or perfected against the state, a unit of state government, or a political subdivision of the state on property owned by the state, a unit of state government, or a political subdivision of the state; any such judgment lien or abstract of judgment is void and unenforceable.

44.001 -Definition - (Taxation of Retirement Benefits by Another State)

In this chapter, “pension or other retirement plan” includes:

1. An annuity, pension, or profit-sharing or stock bonus or similar plane established to provide retirement benefit for an officer or employee of a public or private employer or for a self-employed individual:
2. An annuity, pension, or military retirement pay plan or other retirement plan administered by the United States: and
3. An individual retirement account.

44.002 - Property Exempt

All property in this state is exempt from attachment, execution, and seizure for the satisfaction of a judgment or claim in favor of another state or political sub-division of another state for failure to pay that state’s or that political subdivision’s income tax on benefits received from a pension or other retirement plan.

44.003 - Lien not Created

A claim or judgment in favor of another state or political subdivision of another state for failure to pay that state’s or that political subdivision’s income tax on benefits received from a pension or other retirement plan may not be a lien on any property in this state owned by a resident of this state.

SUMMARY ANALYSIS

TEXAS PROPERTY CODE

PERSONAL PROPERTY EXEMPTIONS

When the Texas Property Code refers to the term “**homestead**” it is talking about land and land only.

When the Texas Property Code refers to the term “**personal property**” it is discussing every thing except land such as money, jewelry, car, stock and bonds, golf clubs, chickens, cattle, etc.

Personal property is exempt from garnishment, attachment, execution, or other seizure if:

1. A family has an aggregate fair market value of not more than \$60,000, after deducting the amount of any liens, security interests, or other charges encumbering the property.
2. A single adult, who is not a member of a family, and has an aggregate fair market value of not more than \$30,000. After deducting the amount of any liens, security interests, or other charges encumbering the property.
3. Certain personal property is exempt from seizure and is not included in the aggregate limits set out in (1) & (2) above. They are:
 - (a) Current wages for personal services, except for court-ordered child support payments;
 - (b) Professionally prescribed health aids of a debtor or a dependent of a debtor;
 - (c) Alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor.
4. Does not prevent seizure by a secured creditor with a contractual landlord's lien or other security in the property.
5. Unpaid commissions for personal services not to exceed 25% of the aggregate limitations prescribed in 1 & 2 above are exempt and are included in the aggregate.

PERSONAL PROPERTY EXEMPTIONS

- (a) The following personal property is exempt under Section 42.001(a):
 1. Home furnishings, including family heirlooms;
 2. Provisions for consumption;
 3. Farming or ranching vehicles and implements;
 4. Tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
 5. Wearing apparel;
 6. Jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 41.001(a);
 7. Two firearms;

8. Athletic and sporting equipment, including bicycles;
9. A two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of the family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person.
10. The following animals and forage on hand for their consumption:
 - A. Two horses, mules, or donkeys and a saddle, blanket, and bridle for each;
 - B. 12 head of cattle;
 - C. 60 head of other types of livestock; and
 - D. 120 fowl and
11. Household pets

(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code, or Subchapter F, Chapter 501, Transportation Code, or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.

PROCESS SERVER - You may seize any personal property that is in excess of these exemptions.

There is also an exemption for retirement plans as set out in Sec. 42.0021.

If in the process of seizing personal property, and the property exceeds the exemption and the debtor can be found in the county where the property is located, the officer making the levy shall ask the debtor to designate the personal property to levied on. If the debtor cannot be found in the county or the debtor fails to make a designation within a reasonable time after the officer's request, the officer shall make the designation. **(It is suggested that the process server should always make a reasonable effort to contact the debtor if he is in the county. The return should reflect the failure of the process server being able to contact the debtor and that the process server made the designation).**

If the aggregate value of a debtor's personal property exceeds the amount exempt from seizure the debtor may designate the property to be levied on. If asked by the court to designate the property to be levied on and the debtor fails to do so with in a reasonable time, or a creditor contests the property is exempt, the court shall make the designation. **(At this point if a creditor files with the court a request that the debtor designate the property to be seized, and the debtor fails to do so in a reasonable time, the process server will wait for the court order to proceed).**

REMEMBER THE DUTY OF THE PROCESS SERVER IS TO CARRY OUT THE ORDERS OF THE COURT.

Personal property exemptions do not apply to a child support lien established under the Family Code.

A public library is exempt from attachment, execution and forced sale.

Real property of the State of Texas, including real property held in the name of the state agencies and funds, and the real property of a political subdivision of the State are exempt from attachment, execution and forced sale. Any judgment liens or abstract of judgment is void and unenforceable. **(This means any State, County, City, Hospital Districts, etc. is not subject to seizure).**

Judgment by other States, because of taxation of retirement benefits, or not subject to attachment, execution or seizure of property in Texas.

CHAPTER 3

TEXAS RULES OF THE COURT

I. RULES OF PRACTICE OF THE DISTRICT AND COUNTY COURT

Note: The “Texas Rules of the Court”, as promulgated by the Supreme Court of Texas, provides information to the civil process server as to how the Court wants writs and processes (court orders) to be served, when they can be served and time limits when a writ or process must be returned to the court.

GENERAL RULES

RULE 4 - Computation of Time

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays and legal holidays shall be counted for purposes of the three-day periods in Rule 21 and 21a, extending other periods by three days when service is made by registered or certified mail or by telephonic document transfer, and for purposes of the five-day periods provided for under Rule 748,749,749(a)(b)(c).

See Section 662.003 Government Code – Official Holidays

Note: Rule 5 allows the court to enlarge on the times set out in Rule 4 under certain circumstances.

RULE 6 - Service of Process On SUNDAY (Excerpts)

No process shall be issued or served on Sunday, except in the case of injunction, attachment, garnishment, sequestration, or distress proceedings; provided that citation by publication published on Sunday shall be valid.

TEXAS RULES OF JUDICIAL ADMINISTRATION, AMENDED BY ADDING RULE 14

RULE 14 - Statewide Certification to Serve Civil Process

14.1 Purpose.

Under Rules 103 and 536 of the Texas Rules of Civil Procedure, as amended effective July 1, 2005, civil process may be served by—in addition to sheriffs and constables and other persons authorized by law, and persons at least 18 years of age authorized by written order of court—“any person certified under order of the Supreme Court.” To improve the standards of practice for private service of process, and to provide a list of persons eligible to serve process in trial courts statewide, the Court—simultaneous with amending Rules 103 and 536—also issued companion orders creating the Process Server Review Board and establishing the basic framework for certification and revocation thereof by the Board. This Rule is intended to build upon that framework by implementing specific procedures to guide the Board’s actions in processing applications, investigating complaints regarding certified process servers, and determining disciplinary action under appropriate circumstances.

14.2 Definitions.

- (a) Board means the Process Server Review Board
- (b) Chair means the Chair of the Board, as appointed by the Supreme Court.

14.3 General Provisions

- (a) Membership of Board. Members of the Board are appointed by the Supreme Court of Texas. Unless an appointment order specifies otherwise, members are appointed to a three-year term.
- (b) General Procedure.
 - (1) A majority of members of the Board shall constitute a quorum.
 - (2) After a quorum has been established at a Board meeting, the Board may decide, upon a majority vote of those present, any matter properly before it.
 - (3) The Chair or his/her designee shall preside at the Board Meetings.
 - (4) The Board may, in its discretion, grant continuances with regard to hearings and other matters before the Board.
 - (5) The Office of Court Administration shall provide clerical assistance to the Board.
- (c) Methods of Service.

(1) Service of any written notice or other document required to be served under this Rule may be accomplished:

- (A) by delivering a copy to the person to be served, or their attorney, either in person or by agent or by courier receipted delivery or by registered or certified mail, to the person's last known address: or
- (B) by fax, to the person's current fax number.

(2) Service by mail shall be complete upon deposit of the notice or other paper, enclosed in a postage-paid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Post Office. Service by fax after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(d) Counting Time.

In computing any period of time prescribed or allowed by this Rule, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not Saturday or Sunday or legal holiday. Saturdays, Sundays and legal holidays shall otherwise be counted for purposes of calculating time periods under this Rule, unless the time period is for five days or less, in which case Saturdays, Sundays and legal holidays shall not be counted for any purpose.

14.4 Certification.

(a) Application.

- (1) A person seeking statewide certification must file with the Clerk of the Supreme Court a sworn application in the form prescribed by the Supreme Court, available from the Clerk of the Court or on the Court's website.
- (2) The application must contain a statement indicating whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude. The application must include a criminal history record obtained within the preceding 90 days from the Texas Department of Public Safety in Austin, Texas. If an applicant's criminal history reflects legal proceedings for which a final disposition is not clearly shown, the applicant bears the burden of establishing that he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude. If an applicant's criminal history reflects that the applicant was charged with a felony or a misdemeanor involving moral turpitude and the charges resulted in an outcome other than acquittal or conviction (such as pretrial diversion, probation, deferred adjudication, community supervision or similar result), the Board may consider such history in determining whether the application should be granted.

- (3) The application must include a certificate from the director of a civil process service course, approved for certification in every state court pursuant to Supreme Court order, stating that the applicant has completed the approved course within the prior year. The applicant bears the burden of establishing that he or she has completed within the prior year a course approved for certification in every state court pursuant to Supreme Court.

(b) Review of Application; Rejection; Approval.

- (1) Applications shall be reviewed and either approved by the Board or rejected for good cause stated. In appropriate circumstances, the Board may approve applications on conditional or probationary basis.
- (2) The Board may, upon request, allow an applicant with criminal history to appear before the Board and provide oral testimony, documentation, or other information pertinent to the applicant's criminal history. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.
- (3) The Board shall promptly notify each applicant in writing of its decision. For applicants rejected, and for applicants approved on conditional or probationary basis, the Board shall specify the good cause for its decision.
- (4) An applicant who is dissatisfied with the Board's decision regarding his or her application may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.
- (5) For each person certified, the Board shall post on a list maintained on the Supreme Court website the person's name and assigned identification number.
- (6) Certification is effective for three years from the last day of the month it issues, unless revoked or suspended under this Rule.

(c) Renewal of Certification.

- (1) A certified process server desiring to renew an existing certification must file with the Board a new application, including a current criminal history statement, criminal history record, and course certificate as specified under Rule 14.4(a).
- (2) A certified process server who desires to avoid any lapse in certification during renewal should submit a completed application no sooner than ninety days before the expiration date defined under Rule 14.4 (b)(6), and no later than forty-five days before the expiration date. Renewal applications filed more than ninety days before the expiration date will not be processed. However, this provision does not guarantee that a timely filed renewal application will be approved prior to expiration of an existing certification, and it is the responsibility of each process server to ensure, prior to serving any process under statewide certification, that his or her statewide certification remains in effect.

14.5 Disciplinary Actions

(a) Conduct Subject to Disciplinary Action. The Board may revoke or suspend any certification issued under this Rule, or issue a letter of reprimand to a certified process server, on a verified complaint after notice and opportunity to respond, for

- (1) conviction of a felony offense, or of a misdemeanor offense involving moral turpitude; or
- (2) other good cause as determined by the Board.

A certified process server who, after obtaining statewide certification, is convicted of a felony offense or of a misdemeanor offense involving moral turpitude shall immediately notify the Clerk of the Supreme Court and cease to serve process pursuant to his or her statewide certification.

(b) Filing of Complaint Against Certified Process Server.

(1) A person desiring to make a complaint against a certified process server shall use the official complaint form approved by the Board and provided on the Court's website.

(2) The complaint shall be completed and signed under oath, with all pertinent documentary evidence attached thereto, and submitted to the Board's mailing address provided on the Court's website.

(3) Upon receipt of a properly executed complaint, the Board shall furnish to the certified process server against whom the complaint was filed copies of the complaint and any original attachments thereto, as well as notice stating: (1) the date the Board is scheduled to consider the complaint; (2) that the Board may revoke the process server's statewide certification or impose other disciplinary action after investigation and consideration of the complaint and any written response submitted by the process server and received by the Board at least three business days prior to the meeting at which the complaint will be considered; and (3) that the Board may allow the complainant, the process server, and any fact or character witnesses to appear at the meeting and present oral testimony. (4) The Board may undertake an investigation on its own initiative based upon a credible report or findings of a judicial officer describing conduct that could be subject to disciplinary action under this Rule.

(c) Investigation of Complaints.

(1) A complaint committee consisting of three or more Board members named by the Chair, or any Board members designated by the Chair to perform this duty ad hoc, shall investigate properly executed complaints and determine if they are supported by credible evidence.

(2) Following investigation, the status of a complaint shall be reported to the Board at its next regularly scheduled meeting, or as soon as practicable thereafter, by the head of the complaint committee or any other member designated by the Chair to investigate the complaint.

(d) Hearing Complaints

(1) Any written response submitted by the process server, including any additional documentary evidence, must be received by the Board at least three business days prior to the meeting at which the complaint will be considered.

(2) In addition to any written response submitted under subsection (1), the Board may allow

the complainant, the process server and any fact or character witnesses to appear at the meeting and present oral testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(3) After hearing a report on a complaint, and considering any written response timely submitted by the process server against whom the complaint was filed, and any testimony, the Board shall vote on the status of the complaint, unless such determination is continued until another Board meeting for good cause.

(4) The Board shall serve upon the affected process server notice of the Board's determination regarding the complaint and any disciplinary action posed. In its written statement, the Board must specify the good cause for disciplinary action.

(5) A process server who is dissatisfied with a Board decision imposing disciplinary action may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.

(6) Unless the Board directs otherwise, imposition of any disciplinary action is effective immediately following a majority vote to impose that action and is not stayed pending appeal.

(7) Complaints determined by the Board to be unsubstantiated or unfounded shall be dismissed.

(8) Nothing in this provision shall include negotiation of an agreed disciplinary resolution either before or after a complaint is considered by the Board. An agreed disciplinary resolution shall not be effective until approved by the Board.

14.6 Reconsideration of Board Decisions.

(a) Request for Reconsideration.

(1) Any certified process server may request reconsideration of a decision by the Board pertaining to an application for certification or a disciplinary action.

(2) A reconsideration request must be in writing and must be received by the Board within thirty (30) days after the date the Board serves notice of the decision for which reconsideration is requested.

(3) The request must identify the process server and the decision of the Board for which reconsideration is requested and must succinctly state the reason for reconsideration.

(b) Reconsideration Procedure.

(1) After receiving a request for reconsideration, the Chair will place the matter on the agenda for the next scheduled meeting of the Board.

(2) The Board may allow the process server seeking reconsideration to appear at the meeting and present additional testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(3) After reconsidering a decision, the Board shall vote on the matter unless such determination is continued until another Board meeting for good cause.

(4) The Board must send the process server written notice stating its decision on reconsideration.

(c) Request for Reconsideration is Necessary Prerequisite for Appeal. A request

For reconsideration is a necessary prerequisite to filing an appeal of a Board decision under Rule 14.7.

14.7 Appeal of Board Decisions.

(a) Procedure for Appealing.

(1) Any certified process server seeking to appeal a Board Decision pertaining to an application for certification or a disciplinary action shall submit a written appeal of such decision to the General Counsel for the Office of Court Administration within thirty (30) days after the date written decision is served upon the process server. The appeal should be addressed to the General Counsel at the mailing address listed on the “Contact Information” page of OCA’s website, currently located at

<http://www.courts.state.tx.us/oca/contact.asp>.

(2) The General Counsel shall promptly forward the appeal to a special committee of three Administrative Regional Presiding Judges, see Tex. Gov’t Code § 74.041. The Committee shall be chosen on a basis predetermined by the Presiding Judges but shall not include the Presiding Judge for the Administrative Region in which the appellant resided at the time of the Board’s decision.

(3) The General Counsel shall notify the Board of the filing of an appeal and upon request, shall make the appeal materials available to the Board or its legal representative.

(4) The appeal must be in a form, or pursuant to a policy, approved by the Regional Presiding Judges, if an appellate form or a policy has been approved by the Regional Presiding Judges. If no appellate form or policy has been approved, the appeal need not be in any particular form, but it must contain (1) a copy of the notice of the Board’s decision with which the process server is dissatisfied; (2) a statement succinctly explaining why the process server is dissatisfied with the Board’s decision; and (3) a copy of the Board’s notice reflecting its decision on reconsideration.

(5) The Office of Court Administration shall adopt rules or policies to ensure that any OCA employee who provides clerical, administrative or other direct support to the Board does not communicate regarding the substance of any appeal under this Rule with any other OCA employee who facilitates the appeal process under this Rule. The rules or policies shall also provide that OCA employees may communicate regarding non substantive aspects of appeals, such as to appeal materials to be forwarded to the special committee.

(b) Consideration of Appeal

(1) Upon receiving notice of an appeal of a disciplinary action, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the complaint and any original attachments; (2) any written response timely submitted by the process serve; (3) notice of the Board’s decision imposing disciplinary action; (4) the Board’s notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1) – (5) to an appellant upon request, and may charge

costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.

(2) Upon receiving notice of an appeal of a decision denying application for certification, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the process server's application for statewide certification, including a record of the applicant's criminal history form the Department of Public Safety; (2) a written statement of the Board's decision denying the application; (3) any additional documentation considered by the Board related to the applicant's criminal history; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1) – (5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.

(3) The special committee shall consider the appeal under an abuse of discretion standard for all issues except those involving pure questions of law, for which the standard of review shall be de novo. Under either standard, the burden is on the appellant to establish that the Board's decision was erroneous.

(4) Absent approval by the special committee, submission of materials other than those described under Rule 14.7 (b) (1)-(2) is prohibited. The special committee may, in its sole discretion, allow a process server to submit additional written materials relating to the appeal. Otherwise only the written materials described under Rule 14.7 (b)(1)-(2) will be considered. A request to submit additional materials must clearly identify the additional materials for which inclusion is requested.

(5) The special committee may consider the appeal without a hearing, and may conduct its deliberations by any appropriate means. The special committee may, in its sole discretion conduct a hearing and allow testimony from the affected process server or any other person with knowledge of the underlying facts relating to the application or the disciplinary action complained of.

(6) After consideration of the appeal the special committee shall notify the Board and the process server in writing of its decision either affirming or reversing the Board's decision. No rehearing or further appeal shall be allowed.

TEXAS RULES OF THE COURT - CONTINUED
DISTRICT AND COUNTY COURTS

RULE 15 - Writs and Process - District and County Courts

The style of all writs and process shall be "The State of Texas" and unless otherwise specially provided by law or these rules every such writ and process shall be directed to any sheriff or any constable within the State of Texas, shall be made returnable on the Monday next after expiration of twenty days from the date of service thereof, and shall be dated and attested by the clerk with the seal of the court impressed thereon, and the date of issuance shall be noted thereon.

RULE 16 - Officer or Authorized Person Shall Endorse All Process

Each officer or authorized person shall endorse on all process and precepts coming to his hand the day and hour on which he received them, the manner in which he executed them, and the time and place the process was served and shall sign the return officially.

RULE 17 - Officer to Execute Process - No Fee in Advance – Exception

Except where otherwise expressly provided by law or these rules, the officer receiving any process to be executed shall not be entitled in any case to demand his fee for executing the same in advance of such execution, but his fee shall be taxed and collected as other costs in the case. **NOTE: See Rule 126**

RULE 21 - FILING AND SERVING PLEADINGS AND MOTIONS (Excerpts)

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefor, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing unless otherwise provided by these rules or shortened by the court. - - - - -

RULE 21a - Methods of Service

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last know address, or by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United State Postal Service. Service by telephonic document transfer after 500 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him by mail or by telephonic document transfer, three days shall be added to the prescribed period. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or any attorney of record, or the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie

evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or instrument was not received or, if service was by mail, that it was not received, within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

A. CITATION

RULE 99 - Issuance and Form of Citation (Excerpts)

a. Issuance. Upon the filing of the petition, the clerk, when requested, shall forthwith issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition. Upon request, separate or additional citations shall be issued by the clerk.

b. Form. The citation shall:

1. Be styled "The State of Texas",
2. Be signed by the clerk under seal of court,
3. Contain name and location of the court,
4. Show date of filing of the petition,
5. Show date of issuance of citation,
6. Show the file number,
7. Show names of parties,
8. Be directed to the defendant,
9. Show the name and address of attorney for plaintiff, otherwise the address of plaintiff,
10. Contain the time within which these rules require the defendant to file a written answer with the clerk who issued citation,
11. Contain address of the clerk, and
12. Shall notify the defendant that in case of failure of defendant to file an answer, judgment by default may be rendered for the relief demanded in the petition. The citation shall direct the defendant to file a written answer to the plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of twenty days after the date of service thereof. The requirement of subsection 10 and 12 of this section shall be in the form set forth in section c of this rule.

c & d - - - - -

RULE 103 - Who May Serve - Amended (Effective July1, 2005)

Process—including citation and other notices, writs, orders, and other papers issued by the court—may be served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of

the Supreme Court. Service by registered or certified mail and litigation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is party to or interested in the outcome of a suit may serve any process in that suit, and, unless otherwise authorized by a written court order, only a sheriff or constable may service a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced to the person delivering the process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

Comment - 2005

The rule is amended to include among the persons authorized to effect service those who meet certification requirements promulgated by the Supreme Court and to prohibit private individuals from serving certain types of process unless, in rare circumstances, a court authorizes an individual to do so.

RULE 105 - DUTY OF OFFICER OR PERSON RECEIVING PROCESS

The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

Note: Be sure and check the last day of service of execution. If served after the return date, the service is void.

RULE 106 - METHOD OF SERVICE

(a) Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by Rule 103 by

(1) delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto,
or

(2) **mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto.**

(b) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service

(1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or

(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

NOTE: It is not the place of the process server to see that an affidavit under (b) (1) & (2) be filed with the court but is the responsibility of the person seeking service. Your duty is to carry out the court order as set out in the citation and nothing else.

RULE 107 - RETURN OF SERVICE OF PROCESS

The return of the officer or **authorized person** executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person. **The return of citation by an authorized person shall be verified.** When the citation was served by registered or certified mail as authorized by Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee's signature. When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain.

Note: The citation served by an officer does not have to be verified.

Where citation is executed by an alternative method as authorized by Rule 106, proof of service shall be made in the manner ordered by the court.

No default judgment shall be granted in any cause until the citation, or process under Rule 108 or 108a, or as ordered by the court in the event citation is executed under Rule 106, shall have been on file with the clerk of the court ten days exclusive of the day of filing and the day of judgment.

EXAMPLES

Making a proper return and proof service is most important and the instructor should provide examples and make sure that the return must reflect the actual truth in executing the process given to him. Anything less could cause the return to be faulty and of no effect.

1. Texas Juris 3rd, Vol. 59, p. 412 defines a return of process as “ a short account in writing made by an officer in respect to the manner in which he or she has executed a writ or process. It is the officer's official statement of the acts done by him or her under the writ in obedience to its directions and in formality with the requirements of law. The return of citation is but a certificate of the officer as to where, when and how it was executed”. It is suggested that you check your county library and read the discussion of executing a writ or process and making a proper return.
2. All process should be executed in a timely manner.
3. Always set out the diligence you used in attempting service such as the number times you went to the address provided to you, the times you went, if you talked to neighbors as whereabouts the defendant might be found.

4. You must be specific as to the time and manner of service.
5. Place of service and by whom process was served.
6. If you are a deputy it proper to show your sheriffs name and signed by you as deputy, if you made the service.
7. If there are more than one defendant they each must be serve individually.

RULE 108 - Defendant Without State

RULE 108a -Service of Process in Foreign Countries

NOTE: SHERIFF/DEPUTY NOT REQUIRED TO SERVICE PROCESS OUTSIDE OF THE STATE OF TEXAS NOR AS TO A FOREIGN COUNTRY. THIS IS THE PROBLEM OF PLAINTIFF'S ATTORNEY!

RULE 109 - Citation by Publication

When a party to a suit, his agent or attorney, shall make oath that the residence on any party defendant is unknown to affiant, and to such party when the affidavit is made by his agent or attorney, or that such defendant is a transient person, and that after due diligence such party and the affiant have been unable to located the whereabouts of such defendant, or that such defendant is absent from or is a nonresident of the State, and that the party applying for the citation has attempted to obtain personal service of nonresident notice as provided for in Rule 108, but has been unable to do so, the clerk shall issue citation for such defendant for service by publication. In such cases it shall be the duty of the court trying the case to inquire into the sufficiency of the diligence exercised in attempting to ascertain the resident or whereabouts of the defendant or to obtain service of non-residence notice, as the case may be, before granting any judgment on such service.

NOTE: IT IS THE OBLIGATION OF THE ATTORNEY FOR THE PLAINTIFF TO GET THE CLERK OF THE COURT TO ISSUE A CITATION FOR SUCH DEFENDANT FOR SERVICE BY PUBLICATION.

If the sheriff receives this citation it is his duty to see that a newspaper publish same and make his return.

RULE 114 - Citation by publication - Number of times to publish (Excerpts)

If citation is issued from the district or county court, the citation shall command such parties to appear and answer at or before 10 o'clock a.m. of the first Monday after the expiration of 42 days from the date of issuance thereof, specifying the day of the week, the day of the month, and the time of day the defendant is required to answer.

If issued from the justice of the peace court, such citation shall command such parties to appear and answer on or before the first day of the first term court which convenes after the expiration of 42 days from the date of issue thereof, specifying the day of the week, and day of the month, that such term will meet.

RULE 116 - Service of Citation by Publication

The citation, when issued, shall be served by the sheriff or any constable of any county of the State of Texas or by the clerk of the court in which the case is pending, by having the same published once each week for four (4) consecutive weeks, the first publication to be at least twenty-eight (28) days before the return day of the citation. In all suits which do not involve the title to land or the partition of real estate, such publication shall be made in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in an adjoining county where a newspaper is published. In all suits which involve the title to land or partition of real estate, such publication shall be made in the county where the land, or a portion thereof, is situated, if there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published.

RULE 117 - Return of Citation by Publication

The return of the officer executing such citation shall be indorsed or attached to the same, and show how and when the citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.

RULE 118 - Amendment of any Process or Service (Excerpts)

At any time in its discretion and upon such notice and on such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

B. COSTS AND SECURITY

RULE 125 - PARTIES RESPONSIBLE

Each party to a suit shall be liable to the officers of the court for all costs incurred by himself.

RULE 126 - FEE FOR EXECUTION OF PROCESS IN A CIVIL CASE, DEMAND

No sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; except when affidavit is filed, as provided by law or these rules. The clerk issuing the process shall indorse thereon the words “pauper oath filed,” and sign his name officially below them; and the officer in whose hands such process is placed for service shall serve the same.

RULE 127 - PARTIES LIABLE FOR OTHER COSTS

Each party to a suit shall be liable for all costs incurred by him. If the costs cannot be collected from the party against whom they have been adjudged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more.

RULE 129 - How Costs Collected

If any party responsible for costs fails or refuses to pay the same within ten days after demand for payment, the clerk or justice of the peace may make certified copy of the bill of costs then due, and place the same in the hands of the sheriff or constable for collection. All taxes imposed on law proceedings shall be included in the bill of costs. Such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the issuance of an execution for costs.

RULE 130 - Officer to Levy

The sheriff or constable upon demand and failure to pay said bill of costs, may levy upon a sufficient amount of property of the person from whom said costs are due to satisfy the same, and sell such property as under execution. Where such party is not a resident of the county where such suit is pending, the payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, unless he is compelled to make a levy.

NOTE: Bill of costs under Rule 129 & 130 is used the same as an execution. The return is made on the bill of cost as though it were an execution. If there is not a return on he bill of costs then you will need to make one and attach it to the bill of costs and return it to the proper court. Remember that an execution under Rule 130 is subject to the homestead and personal property exemption.

RULE 149 - Execution for Costs

When costs have been adjudged against a party and are not paid, the clerk or justice of the court in which the suit was determined may issue execution, accompanied by an itemized bill of costs, against such party to be levied and collected as in other cases; and said officer, on demand of any party to whom any such costs are due, shall issue execution for costs at once. This rule shall not apply to executors, administrators or guardians in cases where costs are adjudged against the estate of a deceased person or of a ward. No execution shall issue in any case for costs until after judgment rendered therefor by the court.

II. RULES OF PRACTICE IN JUSTICE COURTS

RULE 533 - Requisites of Process

Every writ or process from the justice courts shall be issued by the justice, shall be in writing and signed by him officially. The style thereof shall be "The State of Texas." It shall, except where otherwise specially provided by law or these rules be directed to the person or party upon whom it is to be served, be made returnable to some regular term of court, and have noted thereon the date of its issuance.

RULE 534 - Issuance and Form of Citation (Excerpts)

a. Issuance. When a claim or demand is lodged with a justice for suit, the clerk when requested shall forthwith issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition if any is filed. Upon request, separate or additional citations shall be issued by the clerk.

b. Form - The citation shall direct defendant to file a written answer to plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of ten days after the Monday next after the expiration of ten days after the date of service thereof. - - - - -

c. & d. - - - - -

**RULE 536 - Who May serve and Method of Service (Effective July 1, 2005)
amending Subsection (a).**

(a) Process—including citation and other notices, writs, orders, and other papers issued by the court—may be served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court. Service by registered or certified mail and citation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process, and, unless otherwise authorized by a written court order, only a sheriff or constable may serve a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physical enforced by the person delivering the process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

Comment – 2005

Subsection (a) is amended to include among the persons authorized to effect service those who meet certification requirements promulgated by the Supreme Court and to prohibit private individuals for serving certain types of process unless, in rare circumstances, a court authorizes an individual to do so.

(b) Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by this rule by:

(1) delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto, **or**

(2) **mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto if any is filed.**

(c) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a) (1) or (a) 2 at the location named in such affidavit but has not been successful, the court may authorize service:

(1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen (16) years of age at the location specified in such affidavit, or

(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

RULE 536a - Duty of officer or Person receiving and Return of Citation (Excerpts)

The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

The return of the officer or authorized person executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person. The return of citation by an authorized person shall be verified. **When the citation was served by registered or certified mail as authorized by Rule 536, the return by the officer or authorized person must also contain the receipt with the addressee's signature. When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and cause of failure to execute it, and where the defendant is to be found, if he can ascertain.**

Where citation is executed by an alternative method as authorized by Rule 536, proof of service shall be made in the manner ordered by the court. - - - - -

RULE 561 - To Enforce Judgment - Personal Property

The court shall cause its judgments to be carried into execution, and where the judgment is for personal property and the verdict, if any, is that such property has an especial value to the plaintiff the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforced it judgment by attachment, fine and imprisonment.

RULE 565 - Rules Governing Civil Process - Generally Same as County/District Court

The rules governing the district and county courts in relation to judgment and confession thereof, shall also apply to justice courts, in so far as they do not

conflict with some provision of the rules applicable to justice courts.

SUMMARY ANALYSIS

TEXAS RULES OF COURT

Note: The Supreme Court of Texas has set forth rules for all Texas state courts. These rules were created for the purpose of providing an orderly process of dealing from the beginning with the filing of legal proceedings with the court until judgment is rendered. It further provides rules governing the service of legal process and the duties of the process server. It is important that if you are to be successful in being a process server that you study and know the “Texas Rules of Court” as they apply to you. The Supreme Court of Texas, from time to time, will amend their rules and it is imperative that you know the current rules. Talk with your County/District Attorney and ask them to notify you immediately when the rules as to your duties as a process server have been changed, provide you with a copy, so you will be following the current “Texas Rules of Court”. Some of the things to keep in mind, as provided by the rules, are as follows:

1. Computation of time when serving process as to Saturdays, Sundays and legal holidays.
2. **No process shall be served on Sunday, except:**
 - a. injunctions
 - b. attachment
 - c. garnishment
 - d. sequestration
 - e. distress proceedings
 - f. Citation by publication published on Sunday shall be valid.
3. Rules for service of Writs and Process are the same for all courts except where otherwise provided.
4. Process server shall endorse on all process and precepts coming to his hand as follows:
 - a. the day and hour on which he received them
 - b. the manner in which he executed them
 - c. the time and place the process was served, and
 - d. shall sign the return officially.
5. Rule 17 says that no fees are due in advance to the process server unless otherwise provided. Rule 126 says that no sheriff or constable shall be compelled to execute any process in civil case coming from any court other than which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance. The only exception is if a paupers oath has been filed with the process the process server will proceed without first receiving his fees.

The fees to be paid in advance applies only to out of county process! In your county you serve the process and on your return you show you fees. The clerk of the court will include your fee in the bill of cost.

6. Be sure and read the papers given to you by the court or by the attorney and ascertain what time limit the notice and any hearing is set. If it is not during a trial, service

upon all other parties shall be served upon all other parties not less than three days before the time specified for the hearing unless otherwise provided by these rules or shortened by the court.

7. Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action - - - -may be waived by delivering a copy to the party to be served, or by the party's duly authorized agent or attorney of record, as the case maybe, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by fax, or by such other manner as the court in its discretion may direct.- - - -

NOTE: Every pleading, plea, motion or other form of request required to be served under Rule 21, "OTHER THAN THE CITATION" may be served by someone other than sheriff, or constable. Notice may be served by a sheriff or constable or any other person competent to testify if requested to do so.

8. A Citation is issued by the clerk of the court upon the filing of a petition and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition.
9. Citations and other notices may be served anywhere in the state by:
 - a. any sheriff or constable
 - b. by any person authorized by law or
 - c. by written order of the court who is not less than eighteen years of age.
 - d. no person who is a party to or interested in the outcome of a suit shall serve any process.
 - e. Service by registered mail or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending.
 - f. The order authorizing a person to serve process may be made without written motion and no fee shall be imposed for issuance of each order.
10. Officer or authorized person to whom process is delivered shall endorse thereon:
 - a. the day and hour on which he received it, and
 - b. shall execute and return the same without delay.

NOTE: Don't let the civil process papers sit around. It is important that you serve then as soon as reasonably possible. Sometimes if you let these papers sit around you will find that the time of service is about to run out and you will not have time to serve these papers and will have to ask that new papers be issued. You may create civil liability for you, the sheriff, and the county.

EVEN IF YOU NOW KNOW WHERE THE DEFENDANT CAN BE SERVED IN YOUR COUNTY, DO NOT, UNDER ANY CIRCUMSTANCES, SERVE CIVIL PROCESS PAPERS IF THE DATE HAS EXPIRED FOR SERVICE, BUT RETURN THEM TO THE ATTORNEY OR INDIVIDUAL THAT GAVE THEM TO YOU.

11. When you make a return after executing the citation it shall be endorsed on or attached to the process as follows:
 - a. it shall state when the citation was served
 - b. the manner of service
 - c. be signed by the officer officially or by the authorized person.**
 - d. when citation was served by registered or certified mail as authorized by Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee's signature.
 - e. when the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found.
 - f. when citation is executed by an alternative method as authorized in Rule 106, proof of service shall be made in the manner ordered by the court.

NOTE: The making of a return on any legal process is most important. It has to be wholly accurate and reflect exactly what happened. There can be no deviation from the actual facts or the service ordered by the court. In other words let everything in your return be truthful.

There is no wrong way to make a return, as long as you set out the manner you used when you served or tried to serve the process. If the person for whom the process was issued, and you are unable to locate him, check with the neighbors. It is possible that he has moved and if so try to get his new address and include this information in your return.

12. Sheriff is not required to serve process outside the State of Texas or in a foreign country.
13. The obtaining of a Citation by Publication is the duty of the person seeking to obtain service of a defendant, when his whereabouts are unknown, from the clerk of the court where the law suit is pending. The clerk of the Court, in which the case is pending, may serve the Citation by Publication and the sheriff or constable would have nothing to do with service. If the sheriff or constable receives a citation by publication it is his duty to see that it is published in a newspaper (daily or weekly). In District Court, County Court or Justice Court the Citation by Publication must be published:
 - a. once each week for four (4) consecutive weeks,
 - b. the first publication to be at least 28 days before the return day of the citation.
 - c. all suits involve the title to land or partition of real estate, such publication shall be made in the county where the land, or a portion thereof, is situated. If there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published.**

NOTE: Process server should determine if the Citation by Publication involves the title to land or partition of real estate. Use the information for service and publication set out in 13(c).

14. Process servers executing such citation by publication, on return thereof, shall:
- (a) endorse or attach the return to citation,
 - (b) show when and how the citation was executed,
 - (c) specifying the dates of such publication,
 - (d) signed by him officially, and
 - (e) accompanied by a printed copy of such publication

At any time the court in its discretion, upon notice, may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Example: In the event a process server failed to sign the return the court in its discretion could allow the process server to sign the return in his official capacity as it would not be a material prejudice or effect a substantial rights of the party against whom the process issued.

15. No sheriff or constable shall be compelled to execute any process in civil cases from any county other than the one in which he is an officer, unless paid in advance except when indorsed by the clerk issuing process shall indorse on the process the words “**pauper oath filed.**” The officer shall serve the process without being able to demand that his fees be paid in advance, and may never collect his fees for service. The officer should on his return of the process show his fees. You never know, but the court might require the other party to the lawsuit to pay court costs.
16. If the party responsible to pay court costs or refuses to pay court costs, the clerk or justice of the peace may make a certified copy of the bill of costs, then due and place the same in the hands of the sheriff or constable for collection. **Such certified bill of costs** shall have the force and effect of an execution.

Note: If the party to whom is required to pay costs of court is not a resident of the county, where such suit is pending, the costs may be demanded of his attorney of record.

Note: Remember that the Homestead and personal property exemption still applies. If unable to recover on an execution for costs of court from the party to the law suit and the party is a resident of another county, the rules provide that the attorney of record is to pay the costs of court. If the attorney of record under these circumstances should refuse to pay the cost of court this matter should be turned over to the County Attorney or Criminal District Attorney for collection.

This rule does not apply to executors, administrators or guardians in cases where costs are adjudged against the estate of a deceased person or of a ward.

17. Upon the filing of a claim or demand with the justice of the peace, the clerk when requested shall immediately issue a citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citations and a copy of the petition filed. - - - - -

NOTE: It is possible that when the clerk of the justice court issues a citation it could be served by someone other than the sheriff or his deputy, at the direction of the party requesting the issuance of a citation. The service of a citation becomes the duty of the sheriff or his deputy only when he is requested to serve and given the citation.

18. In Justice Court a citation and other notices may be served anywhere in the state by:

1. any sheriff
2. any constable
3. any person authorized by law,
4. any person authorized by law, or
5. by written order of the court who 18 years or older
 - (a) interested parties in the outcome of the suit shall not serve any process.
 - (b) service by registered or certified mail and citation shall be made by the clerk of court, if requested, in which the case is pending.
 - (c) order authorizing a person to serve process may be made without written motion.

19. In Justice Court, the officer or authorized person to whom process is delivered shall:

1. endorse thereon the day and hour on which he received it, and
2. execute and return the same without delay.
3. upon executing the citation shall endorse on or attach to the same:
 - (a) state when the citation was served and
 - (b) the manner of service, and
 - (c) be signed by the officer officially or
 - (d) by the authorized person and verified by him.

4. If citation is served by registered or certified mail and is authorized by Rule 536, the return by the officer or authorized person must also contain the receipt with the addressee's signature.

5. If citation is not served - must show diligence used, and where the defendant may be found, if he can ascertain this information.

6. execution of citation by an alternative method, proof of service shall be made in the manner ordered by the court.

20. In carrying out an execution, where the judgment is for personal property, and such property has an especial value to the plaintiff the court may:

1. award a special writ for the seizure and delivery of such property to the plaintiff, and
2. may in addition to the other relief granted, enforce its judgment by attachment, fine and imprisonment.

21. **The rules governing the district court and county courts in relation to judgment and confession thereof, shall also apply to justice courts, in so far as they do not conflict with some provision of the rules applicable to justice courts.**

CHAPTER 4

COURT COSTS

LOCAL GOVERNMENT CODE

118.131 - Fees Set by Commissioners Court

- (a) The commissioners court of a county may set reasonable fees to be charged for serviced by the offices of the sheriff and constables.
- (b) The commissioners court may not set fees higher then is necessary to pay the expenses of providing the services.
- (c) The commissioners court may not set fees under this section more than once during any one-year period.
- (d) The commissioners court must set the fees before October 1, of each year to be effective January 1, of the following year.
- (e) A notice setting out the fees shall be posted in the same manner in which notices are posted under Section 81.007 and shall be posted in the offices of the county officials who are authorized to charge the fee.
- (f) On or before October 15 of the year in which the fees are initially set, the commissioners court shall provide written notice of the amounts of the fees to the comptroller. If the commissioners court changes the amount of a fee set under this section, the commissioners court shall provide to the comptroller on or before October 15 of the year in which the amount is changed, a written notice of the change in the amount of the fee. Before December 15 of each year, the comptroller shall compile the fee information provided by counties and send the compilation to:
 1. the commissioners court of each county in this state;
 2. any statewide association of counties or
 3. officers of counties that requests in writing before December 15 to be informed; and
 4. the State Bar of Texas.
- (g) A commissioners court that receives a notice under Subsection (f)(1) shall furnish the notice to its district clerk, county clerk, justices of the peace, sheriff, and constables.
- (h) If the commissioners court does not set fees under this section, the fees for services by the offices of the sheriff and constable are those fees provided by law in effect on August 31, 1981. The commissioners court may not assess an applicant a fee

in connection with the filing, serving, or entering of a protective order. A fee may not be charged to an applicant to dismiss, modify, or withdraw a protective order.

- (i) The commissioners court may not assess an applicant a fee in connection with the filing, serving, or entering of a protective order. A fee may not be charged to an applicant to dismiss, modify or withdraw a protective order.

118.132 - Service of Process for Appellate Court

A Sheriff Shall Collect the Same Fee for Service of Process Issued by the Supreme Court or a Court of Appeals as the fee provided for service of process issued by a District Court.

118.134 - Payment of costs incurred for care of certain property

- (a) A sheriff or constable may keep possession of property legally acquired until the party seeking to replevy the property pays the officer's costs incurred for the storage, security, or management of the property.
- (b) Subsection (a) of this section does not apply to costs incurred on property seized in conjunction with an offense alleged under the Penal Code, Code of Criminal Procedure, or Title 116, Vernon's Texas Civil Statutes, when the owner of the property is subsequently found to be not guilty of an offense or other proscribed activity described in those statutes or if other charges whether criminal or civil are dropped.

SUMMARY ANALYSIS

LOCAL GOVERNMENT CODE

FEES OF SHERIFF AND CONSTABLE

The sheriff should notify the commissioners court, some time in July or August of each year, of his costs to serve civil process in order to enable the court to set reasonable civil process fees. If there has been no change the commissioners court should also be notified.

1. the commissioners court may not set fees higher than is necessary to pay the expenses of providing civil process service.
2. the commissioners court cannot set fees for criminal process service as the fees are set by the legislature. Camacho v. Samaniego, 831 S.W.2d 804, OpAtty.Gen. JM-880.
3. the commissioners court, after initially setting civil fees for the sheriffs and constables, must set an new or amended fees before October 1, of each year to be effective January 1, of the following year.
4. the commissioners court can set civil process fees only once each year.
5. notice of setting fees shall be posted in the office of county officials who are authorized to charge the fee.
6. on or before October 15 of the year in which the fees are initially set, the commissioners court shall provide written notice of the amounts of the fees to the

comptroller.

7. on or before October 15 of the year in which the amount is changed, a written notice of the change in the amount of the fee.
8. comptroller shall compile the fee information provided by the counties and send the compilation to:
 - a. commissioners court of each county in this state
 - b. any statewide association of counties or of officers of counties that request in writing before December 15 to be informed.
 - c. State Bar of Texas
9. commissioners court that receives a notice under Subsection (f)(1) shall furnish a notice to its district clerk, county clerk, justices of the peace, sheriff , and constable.
10. failure to set fees in civil matters by commissioner court - sheriff & constable are required to charge those fees provided by law in effect on August 31, 1981.
11. commissioners court may not set fees, under this section, in connection with the filing, serving, or entering of a protective order, nor a fee to dismiss, modify, or withdraw a protective order.
12. sheriff entitle to same fee for service of process issued by the Supreme Court or court of appeals as that of the district court.

NOTE: Commissioners Court may set reasonable fees for services performed by sheriffs and constables in unsuccessful attempt to serve civil process. Op.Atty.Gen JM 1046.

13. a sheriff or constable may keep possession of property legally acquired until the party seeking to replevy (obtain possession) of the property pays the officer's costs incurred for:
 - a. storage
 - b. security, or
 - c. management of the property

EXCEPTION

The above cost does not apply on property seized in conjunction with an offense alleged under Penal Code, Code of Criminal Procedure, or Title 116, Vernon's Texas Civil Statutes when owner of the property is found to be not guilty of an offense or other proscribed activity, or if other charges whether criminal or civil are dropped.

NOTE: It is important for the officer to keep a paper trail of the property legally acquired. Where it is stored. Inventory including damages to property. Name, location of storage company, phone number and any other information that you deem necessary to have full control over this property. Name of the owner, his address and phone number. If it is kept in the property room of the sheriff's office the same procedure should apply.

CHAPTER 5

PAPER TRAIL

As the designated process server you should be thinking about developing a permanent filing system that will reflect how you keep track of each process paper you receive. Without a paper trail you will find it most difficult to keep track of what you are doing and when something must be done. Papers have to be served within a reasonable time and it is up to you to make it happen in a legal way.

It is suggested that you use a computer to file the information that you receive from the process. It then can be easily accessed by you. As a minimum I would want the following extracted from the process paper you receive as follows:

1. Case Number
2. Plaintiff's attorney's name, address and phone number
3. If no attorney involved, then the name, address and phone number of plaintiff
4. Defendant's Attorney's name, address and phone number
5. The type of process received (Execution, citation, etc)
6. Date process papers were received. (Process papers should be stamped with the date and time showing when the papers were received.
7. Date, time and person whom process papers were serve
8. If unable to locate defendant, then whom did you contact to try and find his address. What diligence did you use?
9. Copy information you made on the return.
10. Any conversation with parties involved.
11. Date process papers were returned and to whom.
12. Fees charged.
13. If you recovered property - what did you do with it?
14. Where is property stored?
15. Is property insured or under proper storage conditions?
16. Did you inventory the property, if personal?
17. If it were a number of items did you photograph the personal property?
18. Was a replevy bond used, and if so, who signed and approved the replevy bond?
19. Date on which process must be returned to the court, 30, 60, or 90 days?

NOTE: THIS IS JUST SOME OF THE INFORMATION THAT YOU MIGHT WANT TO ENTER ON YOUR COMPUTER. BE SURE AND BACK UP THIS INFORMATION EVERY DAY.

IF YOU DON'T HAVE A COMPUTER YOU COULD SET UP HAND-WRITTEN FILES TO PROVIDE THE SAME INFORMATION.

CHAPTER 6

CIVIL PRACTICE & REMEDIES CODE

In most instances before a writ can be issued there must be a judgment in which the writ is based upon. If for some reason you think there is a problem with the writ you should contact the plaintiff's attorney, the clerk that issued the writ, or your County/District Attorney for clarification and guidance. Remember your primary duty, in serving a writ, is to carry out the direction of the court. The excerpts taken from the Texas Practice and Remedies Code are most important as well as the other information contained in this manual. This manual does not answer all questions but should be a help to you in serving process.

EXECUTION OF JUDGMENTS TEXAS PRACTICE AND REMEDIES CODE

ISSUANCE AND LEVY OF WRIT

34.001 - No Execution on Dormant Judgment

(a) If a writ of execution is not issued within 10 years after the rendition of a judgment of a court of record or a justice court, the judgment is dormant and execution may not be issued on the judgment unless it is revived.

(b) If a writ of execution is issued within 10 years after rendition of a judgment but a second writ is not issued within 10 years after issuance of the first writ, the judgment becomes dormant. A second writ may be issued at any time within 10 years after issuance of the first writ.

(c) *This section does not apply to a judgment for child support under the family code.*

34.002 - Effect of Plaintiff's Death

(a) If a plaintiff dies after judgment, any writ of execution must be issued in the name of the plaintiff's legal representative, if any, and in the name of any other plaintiff. An affidavit of death and a certificate of appointment of the legal representative, given under the hand and seal of the clerk of the appointing court, must be filed with the clerk of the court issuing the writ of execution.

(b) If a plaintiff dies after judgment and his estate is not administered, the writ of execution must be issued in the name of all plaintiffs shown in the judgment. An affidavit showing that administration of the estate is unnecessary must be filed with the clerk of the court that rendered judgment. Money collected under the execution shall be paid into the registry of the court, and the court shall order the money partitioned and paid to the parties entitled to it.

(c) Death of a plaintiff after a writ of execution has been issued does not abate the execution, and the writ shall be levied and returned as if the plaintiff were living.

34.003 - Effect of Defendant's Death

The death of the defendant after a writ of execution is issued stays the execution

proceedings, but any lien acquired by levy of the writ must be recognized and enforced by the county court in the payment of the debts of the deceased.

34.004 - Levy on Property Conveyed to Third Party

Property that the judgment debtor has sold, mortgaged, or conveyed in trust may not be seized in execution if the purchaser, mortgagee, or trustee points out other property of the debtor in the county that is sufficient to satisfy the execution.

34.005 - Levy on Property of Surety

(a) If the face of a writ of execution or the endorsement of the clerk shows that one of the persons against whom it is issued is surety for another, the officer must first levy on the principal's property that is subject to execution and is located in the county in which the judgment is rendered.

(b) If property of the principal cannot be found that, in the opinion of the officer, is sufficient to satisfy the execution, the officer shall levy first on the principal's property that can be found and then on as much of the property of the surety as is necessary to satisfy the execution.

RECOVERY OF SEIZED PROPERTY

34.021 - Recovery of Property before Sale

A person is entitled to recover his property that has been seized through execution of a writ issued by the court if he judgment on which execution is issued is reversed or set aside and the property has not been sold at execution.

34.022 - Recovery of Property Value After Sale

(a) A person is entitled to recovery from the judgment creditor the market value of the person's property that has been seized through execution of a writ issued by a court if the judgment on which execution is issued is reversed or set aside but the property has been sold at execution.

(b) The amount of recover is determined by the market value at the time of sale of the property sold.

SALE

34.041 - Sale at Place Other Than Courthouse Door

If the public sale of land is required by law to be made at a place other than the courthouse door, sales under this chapter shall be made at the place designated by law.

34.042 - Sale of City Lots

If real property taken in execution consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel must be offered for sale separately unless not susceptible

to separate sale because of the character of improvements.

34.043 - Sale of Rural Property

(a) If real property taken in execution is not located in a city or town, the defendant in the writ who holds legal or equitable title to the property may divide the property into lots of not less than 50 acres and designate the order in which those lots shall be sold.

(b) The defendant must present to the executing officer:

(1) a plat of the property as divided and as surveyed by the county surveyor of the county in which the property is located; and

(2) field notes of each numbered lot with a certificate of the county surveyor certifying that the notes are correct.

(c) The defendant must present the plat and field notes to the executing officer before the sale at a time that will not delay the sale as advertised.

(d) When a sufficient number of the lots are sold to satisfy the amount of the execution, the officer shall stop the sale.

(e) The defendant shall pay the expenses of the survey and the sale, and those expenses do not constitute an additional cost in the case.

34.044 - Stock Shares Subject to Sale

Shares of stock in a corporation or joint-stock company that are owned by defendant in execution may be sold on execution.

34.045 - Persons Eligible to Purchase Real Property

(a) An officer conducting a sale of real property under this subchapter may not execute or deliver a deed to the purchaser of the property unless the purchaser exhibits to the officer an unexpired written statement issued to the person in the manner prescribed by Section 34.015 of the Tax Code, showing that the county assessor-collector of the county in which the sale is conducted has determined that:

(1) there are no delinquent ad valorem taxes owed by the person to that county; and

(2) for each school district or municipality having territory in the county there are no known reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(b) An individual may not bid on or purchase the property in the name of any other individual. An officer conducting a sale under this subchapter may not execute a deed in the name of or deliver a deed to any person other than the person who was the successful bidder.

(c) The deed executed by the officer conducting the sale must name the successful bidder as the grantee and recite that the successful bidder exhibited to that officer an unexpired written statement issued to the person in the manner prescribed by Section 34.015, Tax Code, showing that the county assessor-collector of the county in which the sale

was conducted determined that:

- (1) there are no delinquent ad valorem taxes owed by the person to that county; and
- (2) for each school district or municipality having territory in the county there are no know or reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(d) If a deed contains the recital required by Subsection (c), it is conclusively presumed that this section was complied with.

(e) A person who knowingly violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

(f) To the extent of a conflict between this section and any other law, this section controls.

(g) This section applies only to a sale of real property under this subchapter that is conducted in:

- (1) a county with a population of 250,000 or more; or
- (2) a county with a population of less than 250,000 in which the commissioners court by order has adopted the provisions of this section.

34.045 - Conveyance of Title After Sale

(a) When the sale has been made and its terms complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest, and claim that the defendant in execution had in the property sold.

(b) If the purchaser complies with the terms of the sale but dies before the conveyance is executed, the officer shall execute the conveyance to the purchaser, and the conveyance has the same effect as if it had been executed in the purchaser's lifetime.

34.046 - Purchaser Considered Innocent Purchaser Without Notice

The purchaser of property sold under execution is considered to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the defendant.

34.007 - Distribution of Sale Proceeds

(a) An officer shall deliver money collected on execution to the entitled party at the earliest opportunity.

(b) The officer is entitled to retain from the proceeds of a sale of personal property and amount equal to the reasonable expenses incurred by him in making the levy and keeping the property.

(c) If more money is received from the sale of property than is sufficient to satisfy the executions held by the officer, the officer shall immediately pay the surplus to the defendant or the defendant's agent or attorney.

34.008 - Purchase by Officer Void

If an officer or his deputy conducting an execution sale directly or indirectly purchase the property, the sale is void.

DUTIES AND LIABILITIES OF EXECUTING OFFICER

34.061 - Duty Toward Seized Personality; Liability

- (a) The officer shall keep securely all personal property on which he has levied and for which no delivery bond is given.**
- (b) If an injury or loss to an interested party results from the negligence of the officer, the officer and his sureties are liable for the value of the property lost or damaged.**
- (c) The injured party has the burden to prove:**
 - (1) That the officer took actual possession of the injured party's property; and**
 - (2) the actual value of any property lost or damaged.**

34.062 - Duty of Successor Officer

If the Officer who receives a writ of execution dies or goes out of office before the writ is returned, his successor or the officer authorized to discharge the duties of the office shall proceed in the same manner as the receiving officer was required to proceed.

34.063 - Improper Endorsement of Writ

- (a) If an officer receives more than one writ of execution on the same day against the same person and fails to number them as received or if an officer falsely endorses a writ of execution, the officer and the officer's sureties are liable to the plaintiff in execution only for actual damages suffered by the plaintiff because of the failure or false endorsement.**
- (b) The plaintiff in execution has the burden to prove:**
 - (1) the officer failed to properly number or endorse the writ of execution;**
 - (2) the officer's failure precluded the levy of executable property owned by the judgment debtor;**
 - (3) the executable property owned by the judgment debtor was not exempt from execution or levy; and**
 - (4) the plaintiff in execution suffered actual damages.**

34.064 - Improper Return of Writ

- (a) An officer may file an amended or corrected return after the officer has returned a writ to a court.**
- (b) Once an officer received actual notice of an error on a return or of the officer's failure to file a return, the officer shall amend the return or file the return not later than the 30th day after the date of the receipt of notice.**
- (c) An officer who fails or refuses to amend or file the return may be subject to contempt under Section 7.001(b).**

34.065 - Failure to Levy or Sell

(a) If an officer fails or refuses to levy on or sell property subject to execution and the levy or sale could have taken place, the officer and the officer's sureties are liable to the party entitled to receive the money collected on execution only for the actual damages suffered.

(b) The judgment creditor seeking relief under this section has the burden to prove:

- (1) the judgment creditor has a valid judgment against the judgment debtor;
- (2) the writ of execution was issued to the judgment creditor;
- (3) the writ was delivered to the officer;
- (4) the judgment creditor's judgment was unpaid and unsatisfied;
- (5) the property to be levied on was subject to execution;
- (6) the officer failed or refused to levy under the writ; and
- (7) the amount of actual damages suffered.

(c) Property to be levied on is subject to execution for purposes of this section if the judgment creditor proves that the judgment debtor owned the property at issue, the property was accessible to the officer under the law, the property was situated in the officer's county, and the property was not exempt from execution.

(d) Before a court may find that an officer failed or refused to levy under the writ for purposes of this section, the court must find that the judgment creditor specifically informed the officer that the property was owned by the judgment debtor and was subject to execution and that the creditor directed the officer to levy on the property.

9e) In this section, "actual damages" is the amount of money the property would have sold for at a constable or sheriff's auction minus any costs of sale, commissions, and additional expenses of execution.

34.066 - Improper Sale

(a) If an officer sells property without giving notice as required by the Texas Rules of Civil Procedure or sells property in a manner other than that prescribed by this chapter and the Texas Rules of Civil Procedure, the officer shall be liable only for actual damages sustained by the injured party.

(b) The injured party has the burden to prove that the sale was improper and any actual damages suffered.

34.067 - Failure to Deliver Money Collected

If an officer fails or refuses to deliver money collected under an execution when demanded by the person entitled to receive the money, the officer and the officer's sureties are liable to the person for the amount collected and for damages at a rate of one percent a month on that amount if proven by the injured party.

34.068 - Rules Governing Actions Under This Chapter

(a) This section applies to any claim for damages brought under Section 7.001, 34.061, 34.063, 34.065, 34.066, or 34.067 or under Section 86.023, Local Government Code.

(b) Suit shall be brought in the form of a lawsuit filed against the officer in the county in which the officer holds office.

(c) All suits must be filed not later than the first anniversary of the date on which the injury

accrues.

(d) An officer or a surety may defend the action by stating and providing any defenses provided by law, including any defense that would mitigate damages.

34.069 - Payment of Damages

A county, at the discretion of the commissioners court, may pay any judgment taken against an officer under Section 7.001, 34.061, 34.063, 34.064, 34.065, 34.066, or 34.067 or under Section 86.023, Local Government Code, provided that this section does not apply if the officer is finally convicted under Section 39.02 or 39.03, Penal Code.

34.070 - Right of Subrogation

An officer against whom a judgment has been taken under Section 7.001, 7.002, 34.061, 34.063, 34.064, 34.065, 34.066, or 34.067 or under Section 86.023, Local Government Code, or a county that has paid the judgment on behalf of the officer under Section 34.069, has a right of subrogation against the debtor or person against whom the writ was issued.

34.071 - Duties of Executing Officer

An officer receiving a writ of execution does not have a duty to:

- (a) search for property belonging to the judgment debtor;
- (b) determine whether property belongs to a judgment debtor;
- (c) determine whether property belonging to the judgment debtor is exempt property that is not subject to levy;
- (d) determine the priority of liens asserted against property subject to execution; or
- (e) make multiple levies for cash or multiple levies at the same location.

34.072 - Timing of Execution and Return

- (a) An officer receiving a writ of execution may return the writ after the first levy, or attempted 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 attempted levy.
- (b) Notwithstanding Rule 637, Texas Rules of Civil Procedure, an attempt to levy on property may begin any time during the life of the writ, provided that the officer shall allow enough time for completing the sale of the property.

34.073 - Transfer of Writ; no Duty to Levy Outside of County

- (a) An officer receiving a writ may transfer the writ to another officer in another precinct, or to another law enforcement agency authorized to perform executions, within the county of the first officer who received the writ.
- (b) An officer does not have a duty to levy on or sell property not within the officer's county, unless it is real property that is partially in the officer's county and partially within a contiguous county.

34.074 - Officer's Surety

- (a) An officer's surety may only be liable for the penal sum of the surety bond minus any amounts already paid out under the bond. In no event may an officer's surety be liable for

more than the penal sum of the officer's surety bond.

(b) If the officer and the officer's surety are both defendants in an action brought under this chapter, the surety may deposit in the court's registry the amount unpaid under the surety bond and the court shall determine the proper disposition of this sum or order the return of the deposit to the surety in the court's final judgment.

(c) A surety is not a necessary party to an action brought under this chapter or under Section 7.001. Instead, a prevailing party under these provisions may bring a separate action against a surety failing to pay the amount remaining under the bond on a final judgment. This action must be brought on or before 180 days after the date all appeals are exhausted in the underlying action.

34.075 - Wrongful Levy

Whenever a distress warrant, writ of execution, sequestration, attachment, or other like writ is levied upon personal property, and the property, or any part of the property, is claimed by any claimant who is not a party to the writ, the only remedy against a sheriff or constable for wrongful levy on the property is by trial of right of property under Part VI, Section 9, Texas Rules of Civil Procedure.

34.076 -Exclusive Levy

This subchapter is the exclusive remedy for violations of an officer's duties with regard to the execution and return of writs without regard to the source of the duty prescribed by law.

ENFORCEMENT OF JUDGMENTS OF OTHER STATES

35.003 - Filing and Status of Foreign Judgments

(a) A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state.

(b) The clerk shall treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed.

(c) A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed.

35.007 - Fees

(a) A person filing a foreign judgment shall pay to the clerk of the court the amount as otherwise provided in law for filing suit in the courts of this state.

(b) Filing fees are due and payable at the time of filing.

(c) Fees for other enforcement proceedings are as provided by law for judgments of the courts of this state.

**ENFORCEMENT OF JUDGMENTS
OTHER COUNTRIES**

36.004 - Recognition and Enforcement

Except as provided by Section 36.005, a foreign country judgment that is filed with notice given as provided by this chapter, that meets the requirements of Section 36.002, and that is not refused recognition under Section 36.0044 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The judgment is enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit.

CHAPTER 7

TEXAS RULES OF COURT

**ANCILLARY PROCEEDINGS
WRITS & WARRANTS**

1.

ATTACHMENT

CIVIL PRACTICE & REMEDIES CODE

An explanation is provided in order for the process server to understand what a writ of attachment is all about. By setting out the requirements that a plaintiff must use in order to get this writ, it is hoped that the officer will appreciate and understand the importance of serving the writ in a proper manner.

A writ of an original attachment is available to a plaintiff in a suit if the defendant is justly indebted to the plaintiff, is not sought for the purpose of injuring or harassing the defendant, and the plaintiff will probably lose his debt unless the writ of attachment is issued.

The judge or clerk of a district or county court or a justice of the peace may issue a writ of original attachment returnable to his court. (61.021 Civil Process & Remedies Code)(CP&RC)

A writ of attachment may be levied only on property that by law is subject to levy under a writ of execution. (61.041 CP&RC)

NOTE: Cannot levy on Homestead, subject to exceptions, or exempt personal property.

The officer **attaching personal property** shall retain possession until final judgment unless the property is:

1. replevied;
2. sold as provided by law; or
3. claimed by a third party who posts bond and tries his right to the property (61.042 CP&RC)

The officer **attaching real property** shall immediately file a copy of the writ and the

applicable part of the return with the county clerk of each county in which the property is located.

If the writ of attachment is quashed or vacated, the court that issued the writ shall send a certified copy of the order to the county clerk of each county in which the property is located. (61.043 CP&CR)

Service of a writ of attachment on a financial institution relating to personal property held by the financial institution in the name of or on behalf of a customer of the financial institution is governed by Section 59.008, Finance Code. (61.045 CP&CR)

NOTE: 59.007 of the Finance Code provides that (a) an attachment, injunction, execution, or writ of garnishment may not be issued against or served on a financial institution that has its principal office or a branch in this state to collect money judgment or secure a prospective money judgment against the financial institution before the judgment is filed and all appeals have been foreclosed by law. (b) An attachment, injunction, execution, or writ of garnishment issued to or served on a financial institution for the purpose of collecting a money judgment or securing a prospective money judgment against a customer of the financial institution is governed by Sec. 59.008 of the Finance Code.

59.008 of the Finance Code provides that (a) A claim against a customer of a financial institution shall be delivered or served as otherwise required or permitted by law at the address designated as the address of the registered agent of the financial institution in a registration filed with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution.

(b) If a financial institution files a registration statement with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution, a claim against a customer of the financial institution is not effective as to the financial institution if the claim is served or delivered to an address other than that designated by the financial institution in the registration as the address of the financial institution's registered agent.

(d) The customer bears the burden of preventing or limiting a financial institution's compliance with or response to a claim subject to the section by seeking an appropriate remedy, including a restraining order, injunction, protective order, or other remedy, to prevent or suspend the financial institution's response to a claim against the customer.

(e) A financial institution that does not file a registration with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution, is subject to service or delivery of all claims against the customers of the financial institution or otherwise provided by law.

The grounds for a writ of attachments are as follows:

1. the defendant is not a resident of this state or is a foreign corporation or is acting as such;

2. is about to move from this state permanently and has refused to pay or secure the debt due the plaintiff
3. is in hiding so that ordinary process of law cannot be served on him;
4. has hidden or is about to hide his property for the purpose of defrauding his creditors;
5. is about to remove his property from this state without leaving an amount sufficient to pay his debts;
6. is about to remove all or part of his property; from the county in which the suit is brought with the intent to defraud his creditors; has disposed of or is about to dispose of all or part of his property with the intent to defraud his creditors;
7. has disposed of or is about to dispose of all or part of his property with the intent to defraud his creditors;
8. is about to convert all or part of his property into money for the purpose of placing it beyond the reach of his creditors; or
9. the defendant owes the plaintiff for property obtained by the defendant under false pretenses. (61.002 CP&RC)

LIEN

61.061 - Attachment Lien

Unless quashed or vacated, an executed writ of attachment creates a lien from the date of levy on the real property attached, on the personal property held by the attaching officer, and on the proceeds of any attached personal property that may have been sold.

61.062 - Judgment and Foreclosure

(a) If the plaintiff recovers in the suit, the attachment lien is foreclosed as in the case of other liens. The court shall direct proceeds from personal property previously sold to be applied to the satisfaction of the judgment and the sale of personal property remaining in the hands of the officer and of the real property levied on to satisfy the judgment.

(b) If the writ of attachment on real property was issued from a county or justice court, the court is not required to enter an order or decree foreclosing the lien, but to preserve the lien the judgment must briefly recite the issuance and levy of the writ. The land may be sold under execution after judgment, and sale vests in the purchaser all of the estate of the defendant in the land at the time of the levy.

WORKS OF FINE ART

61.081 - Exemption When en route to or in an Exhibition

(a) Subject to the limitations of this section, a court may not issue and a person may not serve any process of **attachment, execution, sequestration, replevin, or distress or of any kind of seizure, levy, or sale on a work of fine art while it is:**

1. en route to an exhibition; or

2. in the possession of the exhibitor or on display as part of the exhibition.
- (b) The restriction on the issuance and service of process in Subsection (a) applies only for a period that:
1. begins on the date that the work of fine art is en route to the exhibition; and
 2. ends on the earlier of the following dates:
 - (A) six months after the date that the work of fine art is en route to the exhibition; or
 - (B) the date that the exhibition ends.
- (c) Subsection (a) does not apply to a work of fine art if, at any other time, issuance and service of process in relation to the work has been restricted as provided by Subsection (a).
- (d) Subsection (a) does not apply if theft of the work of art from its owner is alleged and found proven by the court.
- (e) A court shall, in issuing service of process described by Subsection (a), require that the person serving the process give notice to the exhibitor not less than seven days before the date the period under ‘Subsection (b) ends of the person’s intent to serve process.
- (f) In this section, “exhibition” means an exhibition:
1. held under the auspices or supervision of:
 - (A) an organization exempt from federal income tax under Section 501 (a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization in Section 501(c)(3) or the code; or
 - (B) a public or private institution of higher education:
 2. held for a cultural, educational, or charitable purpose; and
 3. not held for the profit of the exhibitor.

61.082 - Handling and Transportation

A court may not issue any process of attachment, execution, sequestration, replevin, or distress or of any kind of seizure, levy, or sale on a work of fine art unless the court requires, as part of the order authorizing the process, that the work of fine art is handled and transported in a manner that complies with the accepted standards of the artistic community for works of fine art, including, if appropriate, measures relating to the maintenance of proper environmental conditions, proper maintenance, security, and insurance coverage.

NOTE: Follow the courts instructions explicitly. Contact the court if for some reason you are unable to comply with the court instructions and ask for further instructions how to proceed. If for some reason you are still unable to carry out the further instructions of the court contact you County or District Attorney for help in this matter.

TEXAS RULES OF THE COURT
AS THEY APPLY TO
A WRIT OF ATTACHMENT

RULE 592 - Application for Writ of Attachment and Order (Excerpts)

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for the issuance of a writ of attachment. Such application shall be supported by affidavits of the plaintiff, his agent, his attorney, or other persons having knowledge of the relevant facts. - - - -

No writ shall issue except upon written order of the court after a hearing, which maybe exparte. The court, in its order granting the application, shall make specific findings of facts to support the statutory grounds found to exist, and shall specify the maximum value of property that may be attached, and the amount of bond required of plaintiff, and further shall command that the attached property be kept safe and preserved subject to further orders of the court. - - - -

The court shall further find in its order the amount of bond required of defendant to replevy which, unless the defendant chooses to exercise his option as provided in Rule 599, shall be the amount be the amount of plaintiff's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court. The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

NOTE: See Family code 53.08, CCP 24.11 - Attachment of person!

RULE 593 -Writ of Attachment Directed To Sheriff or Constable

A writ of attachment shall be directed to the sheriff or any constable within the State of Texas. It shall command him to attach and hold, unless replevied, subject to the further order of the court, so much of the property of the defendant, of a reasonable value in approximately the amount fixed by the court, as shall be found within his county.

RULE 594 - Form of Writ

“The State of Texas.

“To the Sheriff or any Constable of any County of the State of Texas, greeting:

“We command you that you attach forthwith so much of the property of C. D., if it be found in your county, repleviable on security, as shall be of value sufficient to make the sum of _____dollars, and the probable costs of suit, to satisfy the demand of A.B., and that you keep and secure in your hands the property as attached, unless replevied, that the same may be liable to further proceedings thereon to be had before our court in _____ County of _____. You will true return make of this writ on or before 10 a.m. of Monday, the ___ day of _____, 20___, showing how you have executed the same.”

NOTE: This writ will be signed by the judge of the court and the return by the officer in which the property is located, making service. Officer cannot go into another county to serve this writ. If there is insufficient property in your county to satisfy the writ, the court may issue additional writs of attachments to other counties to be served by the officers of that county.

RULE 596 - Delivery of Writ

The writ of attachment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer issuing it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

RULE 597 - Duty of Officer

The sheriff or constable receiving the writ shall immediately proceed to execute the same by levying upon so much of the property of the defendant subject to the writ, and found within his county, as may be sufficient to satisfy the command of the writ.

RULE 598 - Levy, how made

The writ of attachment shall be levied in the same manner as is, or may be, the writ of execution upon similar property.

RULE 598a - Service of Writ on Defendant

The defendant shall be served in any manner prescribed for service of citation, or as provided in Rule 21a, with a copy of the writ of attachment, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ. There shall be prominently displayed on the face of the copy of the writ served on the defendant, ***in ten point type** and in a manner calculated to advise a reasonably attentive person of its contents, the following:

*"To _____, Defendant:

"You are hereby notified that certain properties alleged to be owned by you have been attached. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT"

NOTE: This notice to the defendant should be prominently displayed on the face of the copy of the writ. If not, you might call it to the attention of the court. If the court insists that the writ is correct, I would proceed to serve it.

RULE 599 - Defendant may Replevy (Excerpt)

At any time before judgment, should the attached property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under the order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property sought to be replevied (to be estimated by the officer), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant

shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.- - - -

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that attached, for the property attached. Provided that there has been located sufficient property of the defendants to satisfy the order of attachment, the court may authorize substitution on one or more times of defendant's property for all or part of the property attached. The court shall first make findings as to the value of the property to be substituted. **If property is substituted the property released from attachment shall be delivered to defendant.** If such property is personal property; and all liens upon such property from the original order of attachment or modification thereof shall be terminated. Attachment of substituted property shall be deemed to have existed from the date of levy on the original property attached, and no property on which liens have become affixed since the date of levy on the original property may be substituted.

NOTE: If the court allows the defendant to substitute property for that property, or part of that property, which has been attached then upon order by the court you would be required to return that part of the property that has been released to defendant.

RULE 600 - Sale of Perishable Property

Whenever personal property which has been attached shall not have been claimed or replevied, the judge, or justice of the peace, out whose court the writ was issued, may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

RULE 601 - To Protect Interest

In determining whether the property attached is perishable, and the necessity or advantage of ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may by preliminary order entered of record, with or without notice to the parties as the urgency of the case in his opinion requires, direct the sheriff or constable to sell such property at public auction for cash, and thereupon the officer shall sell it accordingly.

RULE 603 - Procedure for Sale

Such sale of attached perishable personal property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and at the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than 10 days, according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.

NOTE: The rules for sale of perishable personal property shall be conducted in the same manner as sales under the rules of execution. If you know the rules of

execution you will have no problem with Ancillary Proceedings (Writs - process)

RULE 604 - Return of Sale

The officer making such sale of perishable property shall promptly pay the proceeds of such sale to the clerk of such court or justice of the peace, as the case may be, and shall make written return of the order of sale signed by him officially, stating:

1. the time and place of the sale,
2. the name of the purchaser,
3. the amount of money received,
4. with an itemized account of the expenses attending sale and
5. such return shall be filed with the papers of the case.

RULE 605 - Judge May Make Necessary Orders

When the perishable personal property levied on under the attachment writ has not been claimed or replevied, the judge or justice of the peace may make such orders, either in term time or vacation, as may be necessary for its preservation or use.

RULE 606 - Return of Writ

The officer executing the writ of attachment shall return the writ, with his action endorsed thereon, or attached thereto,

1. signed by him officially, to the court from which it issued,
2. at or before 10 o'clock a.m. of the Monday next after the expiration of fifteen days from the date of issuance of the writ.
3. such return shall described the property attached with sufficient certainty to identify it,
4. state when the same was attached,
5. whether any personal property attached remains still in his hands,
6. and, if not, the disposition made of the same.

When property has been replevied he shall deliver the replevy bond to the clerk or justice of the peace to be filed with the papers of the cause.

RULE 607 - Report of Disposition of Property

When property levied on is claimed, replevied or sold, or otherwise disposed of after the writ has been returned, the officer having the custody of the same shall:

1. immediately make a report in writing,
2. signed by him officially, to the clerk, or justice of the peace , as the case may be, showing such disposition of the property.
3. such report shall be filed among the papers of the cause.

RULE 609 - Amendment - Officers Return

Clerical errors in the affidavit, bond, or writ of attachment, **or the officer's return**, may upon application in writing to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize by an order entered in the minutes of the court or noted on the docket of the justice of the peace, provided the amendment does not change or add to the grounds of such attachment as stated in the affidavit, and provide such amendment appears to the judge of justice to be in furtherance of justice.

NOTE: In the event there is an error or errors in the officers return the court may authorize the officer to amend the return in such manner and on such terms as the judge shall authorize by an order entered in the minutes of the court or noted on the docket of the justice of the peace. Under these circumstances there is no problem for the officer in amending his return.

EXAMPLES

There have been very few cases cited in the Texas Revised Civil Statutes, sometimes referred to as "the **Black Statutes**" concerning a Writ of Attachment. The reason for the name "**Black Statutes**" is because the statutes are published in a black hard back cover. Many of the examples are from old cases and you should check with your County Attorney as to their current validity.

1. Where the levy under a writ of attachment was not made until two days after the return date of the writ, the levy was absolutely void. *Rone v. Marti*, 244 S.W. 822.
2. A writ of attachment regular and valid on its face will protect the officer who executes it. *Randall v. Rosenthal*, 31 S.W. 822.
3. An officer in whose hands a writ of attachment is placed must execute it, although he may have knowledge of the insufficiency of the cause of action, and that it was sued out maliciously; and he is not liable on his official bond. *Blum v. Strong*, 6 S.W. 167.
4. As the sheriff's possession of property attached at the instance of the plaintiff is no more subject to control of the plaintiff as to the manner in which he keeps the same than to direction of defendant, and as levy of a writ of attachment does not satisfy the debt, plaintiff is not responsible to defendant for injury to the attached property due to misconduct or negligence of the sheriff; but the sheriff's wrong is an injury to both parties to whom the sheriff and the sureties on his bond may be caused to respond. *Kanaman v. Hubbard*, 222 S.W. 151.
5. A writ of attachment, if valid, justifies the seizure of so much of the debtor's nonexempt property as is necessary to satisfy the creditor's demand. *Miller v. Dunagan*, 123 S.W. 363.
6. No valid levy was made, where sheriff merely rode out among steers, counted them, and left them without segregating them from other steers in pasture or making arrangements to put any one in charge; there being no "taking into possession." *Western Nat. Bank of Hereford v. Steele*, 27 S.W.2d 572; *Williams v. De Baca*, 113 S.W.2d 566.
7. Posting notice of attempted levy attachment was insufficient where sheriff did not take

physical possession of property. *Osborn v. Paul*, 27 S.W. 572.

8. Private process servers are prohibited from executing writs of attachment, sequestration, and distress warrants as only a sheriff or constable may execute the writs; however, private process servers are permitted to serve notices of the writs on defendants pursuant to Rule 21a, 593, 598a, 6d12, 613, 700a, Texas Rules of Civil Procedure. *Lawyers Civil Process, Inc. v. State ex rel Vines*, 690 S.W. 939.
9. Under statute, an officer attaching personal property must keep the property in his possession until final judgment is rendered, unless the property is replevied, sold, or claimed by a third party on oath and bond.

An officer who attaches personal property is under obligation to care for it, but officer is not subject to control of either plaintiff or defendant as to the manner in which he shall perform the duty, and is not the agent or servant of either party.

Letter addressed by attorney for plaintiffs to constable informing him that one of defendants had replevied most of machinery levied upon by constable under writ of attachment, and that plaintiffs had therefore released the rest of the property levied upon and that there would be no further necessity to keep any watchmen on the property, **had no legal effect**, until judgment was rendered or property was replevied or sold, or until constable was presented with a claimant's oath and bond, constable had duty to retain custody and control of the property.

Attaching officer need not himself guard property attached but may employ others to perform the duty for him and although no fee for care of attached property is fixed by statute, the officer is entitled to a reasonable allowance for his services. *Sorrells v. Irion*, 216 S.W.2d 1021.

10. **To pass title under attachments proceedings, the description of land, as given in sheriff's return on the writ of attachment, must be clear and definite and certain as the description in a deed.**

Davis v. Kirby Lumber Corp. 158 S.W.2d 888.

2.

SEQUESTRATION

CIVIL PRACTICE & REMEDIES CODE

62.001 - Grounds

A writ of sequestration is available to a plaintiff in a suit if:

1. the suit is for title or possession of personal property or fixtures or for foreclosure or enforcement of a mortgage, lien, or security interest on foreclosure or enforcement of a mortgage, lien, or security interest on personal property or fixtures and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property will conceal, dispose of, ill-treat, waste, or destroy the property or remove it from the county during the suit;

2. the suit is for title or possession of real property or for foreclosure or enforcement of a mortgage or lien on real property and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property will use his possession to injure or ill-treat the property or waste or convert to his own use the timber, rents, fruits, or revenue of the property;

3. the suit is for the title or possession of property from which the plaintiff has been ejected by force or violence; or

4. the suit is to try the title to real property, to remove a cloud from the title of real property, to foreclose a lien on real property, or to partition real property and the plaintiff makes an oath that one or more of the defendants is a nonresident of this state.

62.002 - Pending Suit Required

A writ of sequestration may be issued at the initiation of a suit or at any time before final judgment.

62.003 - Available for Claim Not Due

A writ of sequestration may be issued for personal property under a mortgage or a lien even though the right of action on the mortgage or lien has not accrued. The proceedings relating to the writ shall be as in other cases, except that final judgment may not be rendered against the defendant until the right of action has accrued.

62.021 - Who May Issue

A district or county court judge or a justice of the peace may issue writs of sequestration returnable to his court.

62.023 - Required Statement of Rights

(a) A writ of sequestration must prominently display the following statement on the face of the writ:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.

(b) The statement must be printed in **10-point type** and in a manner intended to advise a reasonable attentive person of its contents.

62.061 - Officer's Liability and Duty of Care

(a) An officer who executes a writ of sequestration shall care for and manage in a prudent manner the sequestered property be retain in custody.

(b) If the officer entrusts sequestered property to another person, the officer is responsible for the acts of that person relating to the property.

(c) The officer is liable for injuries to the sequestered property resulting from his neglect or mismanagement or from the neglect or mismanagement of a person to whom he entrusts the property.

NOTE: The same rules apply in serving a writ of sequestration as it would be in serving any other writ.

62.062 - Compensation of Officer

(a) An officer who retains custody of sequestered property is entitled to just compensation and reasonable charges to be determined by the court that issued the writ.

(b) The officer's compensation and charges shall be taxed and collected as a cost of suit.

NOTE: Any fees collected would go to the general fund of the county.

62.063 - Indemnification of Officer for Money Spent

If an officer is required to expend money in the security, management, or care of sequestered property, he may retain possession of the property until the money is repaid by the party seeking to replevy the property or by that party's agent or attorney.

NOTE: You are required to take care of the property and before property can be returned you are required to see that the money expended by you, is paid to you from the party seeking replevy of the property. Keep receipts of the money expended by you and give a receipt to the party seeking replevy of the property when you are paid.

Money expended by you, for care of the property sequestered, should come from county funds. Sec.130.904 - Local Government Code "Sheriff's Petty Cash Fund" provides the commissioners court of a county may establish a petty cash fund for the sheriff's department The fund is appropriated from the general fund of the county. Unless otherwise authorized by a resolution of the commissioners court, the petty cash fund may be used only to advance funds to an officer or employee of the sheriff's department who is required to travel outside the county to conduct an investigation or to obtain custody of a prisoner. YOU NEED TO GET THE COMMISSIONERS COURT TO PASS A RESOLUTION THAT THE

SHERIFF MAY USE MONEY FROM THE PETTY CASH FUND TO COMPLY WITH 63.063 OF THE CIVIL PRACTICES & REMEDIES CODE. If the commissioners court has not created a petty cash fund under Sec. 130.904, Local Government Code it is suggested that you ask them to do so.

SEQUESTRATION

TEXAS RULES OF THE COURT

RULE 699 - Requisites of Writ

The writ of sequestration shall be directed

1. To the Sheriff or any Constable within the State of Texas (not naming a specific county) and
2. shall command him to take into his possession the property, describing the same as it is described in the application or affidavits, if to be found in his county, and to keep the same subject to further orders of the court, unless the same is replevied, and
- 3 there shall be prominently displayed on the face of the writ, in 10 point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

“YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.”

RULE 700 - Amendment of Officers Return

Clerical errors in the affidavit, bond, or writ of sequestration or the officer’s return thereof may upon application in writing to the judge of the court in which the suit is filed and after notice to the opponent, be amended in such manner and on such terms as the judge shall authorize by an order entered in the minutes of the court, provided the amendment does not change or add to the grounds of such sequestration as stated in the affidavit, and provided such amendment appears to the judge to be in furtherance of justice.

RULE 700a - Service of Writ on Defendant

The defendant shall be served in any manner provided for service of citation or as provided in Rule 21a, with a copy of the writ of sequestration, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ. There shall also be prominently displayed on the face of the copy of the writ served on defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

“To _____, Defendant:
You are hereby notified that certain properties alleged to be claimed by you have been sequestered. If you claim any rights in such property, you are advised:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY
BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION
OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.”

RULE 701 - Defendant May Replevy (Excerpts)

At any time before judgment, should the sequestered property not have been previously claimed, replevied, or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond, with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff in the amount fixed by the court’s order, conditioned as provided in Rule 702 or Rule 703.

On reasonable notice to the opposing (which may be less than a three days) either party shall have the right to prompt judicial review - - - - - The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court’s prior order, and such order of the court shall supersede and control with respect to such matters.

RULE 702 - Bond for Personal Property

If the property to be replevied be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or dispose of the same, according to the plaintiff’s affidavit, and that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment and of the fruits, hire or revenue of the same in case he shall be condemned to do so.

RULE 703 - Bond for Real Estate

If the property be real estate, the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned so to do.

RULE 704 - Return of Bond and Entry of Judgment

The bond provided for in the three preceding rules shall be returned with the writ to the court from whence the writ issued. In case the suit is decided against the defendant, final judgment shall be rendered against all the obligors in such bond, jointly and severally, for the value of the property replevied as of the date of the execution the replevy bond, and the value of the fruits, hire, revenue, or rent thereof. As the case may be.

RULE 705 - Defendant May Return Sequestered Property

Within ten days after final judgment for personal property the defendant may deliver to the plaintiff, or to the officer who levied the sequestration or to his successor in office the personal property in question and such officer shall deliver same to the plaintiff upon his demand therefor; or such defendant shall deliver such property to the officer demanding same under execution issued therefore upon a judgment for the title or possession of the same; **and such**

officer shall receipt the defendant for such property, provided, however, that such delivery to the plaintiff or to such officer shall be without prejudice to any rights of the plaintiff under the replevy bond given by the defendant. Where a mortgage or other lien of any kind is foreclosed upon personal property sequestered and replevied, the defendant shall deliver such property to the officer calling for same under order of sale issued upon a judgment foreclosing such mortgage or other lien, either in the county of defendant's residence or in the county where sequestered as demanded by such officer; provided, however, that such delivery by the defendant shall be without prejudiced to any rights of the plaintiff under the replevy bond given by the defendant.

RULE 706 - Disposition of the Property by Officer

When the property is tendered back by the defendant to the officer who sequestered the same or to the officer calling for same under an order of sale, such officer shall receive said property and hold or dispose of the same as ordered by the court; provided, however, that such return to and receipt of same by the officer and any sale or disposition of said property by the officer under order or judgment of the court, shall not affect or limit any right of the plaintiff under the bond provided for in Rule 702.

RULE 707 - Execution

If the property be not returned and received, as provided in the two preceding rules, execution shall issue upon said judgment for the amount due thereon, as in other cases.

RULE 708 - Plaintiff May Replevy (Excerpts)

When the defendant fails to replevy the property within ten days after the levy of the writ and service of notice on defendant, the officer having the property in possession shall at any time thereafter and before final judgment, deliver the same to the plaintiff upon his giving bond payable to defendant in a sum of money not less than the amount fixed by the court's order, with sufficient surety or sureties as provided by statute to be approved by such officer. If the property to be replevied be personal property, the condition of the bond shall be that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire, or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment (regardless of the cause of such difference in value, and of the fruits, hire, or revenue is the same in case he shall be condemned to do so). If the property be real estate, the condition of such bond shall be that the plaintiff will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned to do so.

On reasonable notice to the opposing party(which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. - - - - - The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

RULE 709 - When Bond Forfeited (Excerpts)

The bond provided for in the preceding rule shall be returned by the officer to the court issuing the writ - - - - -

RULE 710 - Sale of Perishable Goods

If after the expiration of ten days from the levy of a writ of sequestration the defendant has failed to replevy he same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed or greatly depreciated in value by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or vacation, to order the sale of said property or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either partly may replevy the property at any time before such sale.

RULE 711 - Order of Sale for

The judge or justice granting the order provided for in the preceding rule shall issue an order directed to the officer having such property in possession, commanding such officer to sell such property in the same manner as under execution.

RULE 712 - Return of Order

The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued, with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceed of such sale.

RULE 713 - Sale on debt Not due

If the suit in which the sequestration issued be for a debt or demand not yet due, and the property sequestered be likely to be wasted, destroyed or greatly depreciated in value by keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due.

NOTE: You may receive an objection from an attorney that you can't sell a debt or demand not yet due. If the court decides there are grounds for sale and orders the sale - - you must proceed with the sale.

RULE 714 - Purchaser's bond

In the case of a sale as provided for in the preceding rule, the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, **to be approved by the officer making the sale,** and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given.

RULE 715 - Return of bond

The bond provided for in the preceding rule shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause.

RULE 716 - Recovery on bond

In case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon and all costs incurred in the enforcement and collection of the same;
and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause.

EXAMPLES

1. Where sheriff's return on plaintiff's sequestration writ stated that on March 2, 1946, described realty was in sheriff's possession but there was no statement in return that a replevin bond was or was not given, nor that realty was or was not returned to possession of defendants, return was not conclusive or even prima facie as to such facts and it would be assumed that the facts were proved in trial of case. Lindsey v. Williams, 228 S.W, 2d 243
2. The statute requiring that "value" of property replevied in sequestration proceeding - - - refers to market value. Universal Credit Co. v. Cole, 146 S.W. 2d 222

3.

DISTRESS WARRANTS

TEXAS RULES OF THE COURT

A distress warrant may be issued by a court at either at the commencement of a suit or at any time during its progress with the justice of the peace. A distress warrant is for the purpose of stating that the amount sued for is rent, or advances described by statute, or shall produce a writing signed by the tenant to that effect and further swear such warrant is not for the purpose of vexing and harassing the defendant.

RULE 612 -Requisites For Distress Warrant

A distress warrant shall be directed to the sheriff or any constable within the State of Texas. It shall command him to attach and hold, unless replevied, subject to the further orders of the court having jurisdiction, so much of the property of the defendant, not exempt by statute, of reasonable value in approximately the amount fixed by the justice of the peace. As shall be found within his county.

RULE 613 - Service of Distress Warrant on Defendant

The defendant shall be served in any manner prescribed for service of citation, or as provided in Rule 21a, with a copy of the distress warrant, the application, accompanying affidavits, and orders of the justice of the peace as soon as practicable following the levy of the warrant. Here shall be prominently displayed on the face of the copy of the warrant served on the defendant, ***in 10-point type** and in a manner calculated to advise a reasonably attentive person of its contents, the following:

*To _____, Defendant: You are hereby notified that certain properties alleged to be owned by you have been seized. If you claim any rights in such property, you are advised:

“YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A TO RIGHT SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WARRANT.”

RULE 614 - Defendant may replevy (Excerpts)

At any timed before judgment, should the seized property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property, if it has been sold under order of the court, by giving a bond, to be approved by the court having jurisdiction - - - -the defendant shall have the right to move the court for substitution of property, of equal value as that attached, for the property seized. - - - - If property is substituted, the property released from seizure shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of seizure or modification thereof shall be terminated. Seizure of substituted property shall be deemed to have existed from the date of levy on the original property seized, and no property on which liens have become affixed since the date of levy on the original property may be substituted.

NOTE: If the judge substitutes property and gives you the notice of substitution you are required to return the original property seized... It is suggested that when you return the original property seized that you make a return on the notice and return it to the court.

RULE 614a - Dissolution or Modification of Distress Warrant (Excerpts)

A defendant whose property has been seized or any intervening claimant who claims an interest in such property, may by sworn written motion, seek to vacate, dissolve, or modify the seizure. - - - - The court may make all such orders, including orders concerning the care, preservation, or disposition of the property (or the proceeds therefrom if the same has been sold), as justice may require.

NOTE: If the justice issues an order for the care, preservation, or disposition of the property, or the proceeds therefrom if the same has been sold and you have been put on notice of this order you will be required to follow the orders of the court. It is suggested that you make a return on the court order how you have complied with

order and return it to the court. You now have a complete paper trail for your files.

RULE 615 - Sale of Perishable Property

Whenever personal property which has been levied on under a distress warrant shall not have been claimed or replevied, the judge, or justice of the peace, to whose court such writ is made returnable may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property in danger of serious and immediate waste or decay, or that the keeping it the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

NOTE: If you have any problems with waste, decay or if keeping property until trial will necessarily be attended with such expense or greatly deteriorate in value you need to get in touch with the judge immediately in order to protect the value of the property seized. At that point the judge should issue an order authorizing sale of the property. Be sure and do this in writing, and call it to the judges attention. This way you will have a paper trail and the court will be on notice of the problem.

RULE 616 - Sale to Protect Interest

In determining whether the property levied upon is perishable, and the necessity or advantage of ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may be a preliminary order entered of record with or without notice to the parties as the urgency of the case in his opinion requires, **direct the sheriff or constable to sell such property at public auction for cash, and thereupon the sheriff or constable shall sell it accordingly.** If the application for an order of sale be filed by any person or party other than the defendant from whose possession the property was taken by levy, the court shall not grant such order, unless the applicant shall file with such court a bond payable to such defendant, with two or more good and sufficient sureties, to be approved by said court, conditioned that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made.

NOTE: You must wait for the court order of sale before you can proceed. Remember it is the judge that makes the decision as to whether or not the goods are perishable. Now you can see the reason of the paper trail.

RULE: 617 - Procedure For Sale

Such sale of perishable personal property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than 10 days, according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.

NOTE: Be sure that you read the order of the court and do exactly as ordered.

RULE 618 - Return of Sale

The officer making such sale of perishable property shall promptly pay the proceeds of such sale to the clerk of such court or to the justice of the peace, as the case may be, and shall make written return of the order of sale, signed by him officially, stating the time and place of the sale, the name of the purchaser, and the amount of money received, with an itemized account of the expenses attending the sale. Such return shall be filed with the papers of the case.

Note: Be sure and get a receipt for the proceeds turned over to the clerk.

RULE 619 - Citation for Defendant and Return

The justice at the time he issues the warrant shall issue a citation to the defendant requiring him to answer before such justice at the first day of the next succeeding term of court, stating the time and place of holding same, if he has jurisdiction to finally try the cause, and upon its being returned served, to proceed to judgment as in ordinary cases; and if he has not such jurisdiction, the citation shall require the defendant to answer before the court to which the warrant was made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, stating the place of holding the court, and shall be returned with the other papers to such court. **If the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the case ex parte, and may enter judgment.**

RULE 620 - Petition

When the warrant is made returnable to the district or county court, the plaintiff shall file his petition within 10 days from the date of the issuance of the writ.

EXAMPLES

1. The statute authorizing issuance of distress warrant, when tenant is about to remove property from leased premises, permits issuance of writ at any time before landlord's lien is lost, and does not prohibiting issuance of writ after removal of property.

Gollehon v. Porter, 161 S.W.2d 134

2. Where lease required tenant to pay rent, taxes and insurance and lessor retained statutory lien in addition to contractual lien on all personal property on premises on default by lessee, lessor had right to obtain writ of garnishment and distress warrant.

3. Private process servers are prohibited from executing writs of attachment, sequestration, and distress warrants as only a sheriff or constable may execute the writs; however, private process serves are permitted to serve notices of the writs on defendants pursuant to rule 21a Texas Rules of Procedure.

Lawyers Civil Process, Inc. v. State ex rel. Vines, 690 S.W.2d 939

NOTE: The above examples are set out so that the officer can understand the situations in which a distress warrant may be issued.

4.

EXECUTIONS

TEXAS RULES OF THE COURT

An execution is a process of the court, when final judgment has been entered, that has been issued by the clerk of the district or county court or the justice of the peace, as the case may be, to enforce the judgment of the court. It shall be addressed to any sheriff or any constable within the State of Texas. Besides citations you will probably serve more civil executions than any other legal papers, however, it important for you to know the rules to all processes so they may be handled properly.

RULE 621 - Enforcement of Judgment

The judgments of the district, county, and justice courts shall be enforced by execution or other appropriate process. **Such execution or other process shall be returnable in 30, 60, or 90 days as requested by the plaintiff, his agent or attorney.**

NOTE: Writ of execution, after the lapse of time in which it is made returnable by law, is of no force; and the right of an officer, by virtue of the writ, to take and sell property ceases from the date the writ is returnable. Chance v. Pace, 151 S.W. 843, Long v. Castaneda, 475 S.W.2d 578.

RULE 622 - Execution

An execution is a process of the court from which it is issued. The clerk of the district, or county court, or the justice of the peace, as the case may be, shall tax the costs in every case in which a final judgment has been rendered and shall issue execution to enforce such judgment and collect such costs. The execution and subsequent executions shall not be addressed to a particular county, **but shall be addressed to any sheriff or any constable within the State of Texas.**

NOTE: 1. Trial court may enforce judgment through order of execution, attachment, garnishment, or order requiring post judgment turnover of judgment debtor's property, order of contempt, or by others orders necessary or proper in aid of its jurisdiction. Greiner v. Jameson, 865 S.W. 2d 493

2. No part of a spendthrift trust estate can be taken on execution or garnishment by creditors of beneficiary. Bank of Dallas v. Republic Nat. Bank of Dallas, 540 S.W. 2d 499.

RULE 629 - Requisites of Execution

The style of the execution shall be

1. The State of Texas
2. It shall be directed to any sheriff or any constable within the State of Texas.
3. It shall be signed by the clerk or justice officially, and bear the seal of the court, if issued out of the district or county court, and shall require the officer to execute it according to its terms, and to make the costs which have been adjudged against the

defendant in execution and the further costs of executing the writ.

4. It shall describe the judgment, stating the court in which, and the time when, rendered.

5. The names of the parties in whose favor and against whom the judgment was rendered.

6. A correct copy of the bill of costs taxed against the defendant in execution shall be attached to the writ.

7. **It shall require the officer to return it within 30, 60, or 90 days, as directed by the plaintiff or his attorney.**

RULE 630 - Execution on Judgment for Money

When an execution is issued upon a judgment for a sum of money, or directing the payment simply of a sum of money, it must specify in the body thereof the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law.

RULE 631 - Execution for Sale of Particular Property

An execution issued upon a judgment for the sale of particular chattels or personal property or real estate, must particularly describe the property, and shall direct the officer to make the sale by previously giving the public notice of the time and place of sale required by law and these rules.

RULE 632 - Execution for Delivery of Certain Property

An execution issued upon a judgment for the delivery of the possession of a chattel or personal property, or for the delivery of the possession of real property, shall particularly describe the property, and designate the party to whom the judgment awards the possession. The writ shall require the officer to deliver the possession of the property to the party entitled thereto.

RULE 633 - Execution for Possession or value of Personal Property

If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

RULE 634 - Execution Superseded

The clerk or justice of the peace shall immediately issue a writ of supersedeas suspending all further proceedings under any execution previously issued when a supersedeas bond is afterward filed and approved within the time prescribed by law or these rules.

RULE 635 - Stay of Execution in Justice Court

At any time within ten days after the rendition of any judgment in a justice court, the justice may grant a stay of execution thereof for three months from the date of such judgment, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties, to be approved by the justice, appear before him and

acknowledge themselves and each of them bound to the successful party in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of execution shall be granted unless the party applying therefor shall first file an affidavit with the justice that he has not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him and would cause a sacrifice of his property which would not likely be caused should said execution be stayed. Such acknowledgment shall be entered by the justice on his docket and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such day.

RULE 636 - Indorsement of Execution by Officer

The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person he shall number them as received.

RULE 637 - Levy of Execution

When an execution is delivered to an officer he shall proceed without delay to levy the same upon the property of the defendant found within his county not exempt from execution, unless otherwise directed by the plaintiff, his agent or attorney. The officer shall

1. first call upon the defendant, if he can be found, or, if absent, upon his agent within the county, if known, to point out property to be levied upon, and the levy shall first be made upon the property designated by the defendant, or his agent.
2. if in the opinion of the officer the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall
3. require an additional designation by the defendant.
4. if no property be thus designated by the defendant, the officer shall levy the execution upon any property of the defendant subject to execution.

NOTE: You cannot execute on homestead or exempt personal property. If defendant claims two (2) homesteads and will not voluntarily designate which one he claims as a homestead ground but it shall be sufficient of him to indorse such levy on the writ. you should report back to the plaintiff's attorney. It will be up to the attorney to request the court to require the defendant to voluntarily designate the homestead, if the defendant does not do so, the court may appoint a commissioner to so designate the homestead for the defendant. It is possible that time will run out before you can levy under the current execution and you will have to make your return showing that you were unable to determine the homestead of the defendant and could find no other property in your county to satisfy the judgment. If a new execution is issued, you may then proceed to levy on the property not designated as a homestead.

RULE 638 - Property Not To Be Designated By the Defendant

A defendant in execution shall not point out property which he has sold, mortgaged or

conveyed in trust or property exempt from forced sale.

RULE 639 - Levy

In order to make a levy on real estate it shall not be necessary for the officer to go upon the ground but it shall be sufficient of him to indorse such levy on the writ.

Levy upon personal property is made by taking possession thereof, when the defendant in execution is entitled to the possession. Where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them where there are several.

RULE 640 - Levy on Stock Running at Large

A levy upon livestock running at large in a range, and which cannot be herded and penned without great inconvenience and expense, may be made by designating by reasonable estimate the number of animals and describing them by their marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner or his herder or agent, if residing within the county and known to the officer.

RULE 641 - Levy on Shares of Stock

A levy upon shares of stock of any corporation or joint stock company for which a certificate is outstanding is made by the officer seizing and taking possession of such certificate. Provided, however, that nothing herein shall be construed as restricting any rights granted under Section 8.317 of the Texas Uniform Commercial Code.

RULE 643 - Levy on Goods Pledged or Mortgaged

Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage.

Rule 644 - Defendant May Give Delivery Bond

Any personal property taken in execution may be returned to the defendant by the officer upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, conditioned that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of a fair value thereof, which shall be stated in the bond.

RULE 645 - Property May Be Sold By the Defendant

Where property has been replevied, as provided in the proceeding rule, the defendant

may sell or dispose of the same, paying the officer the stipulated value thereof.

RULE 646 - Forfeited Delivery Bond

In case of the non-delivery of the property according to the terms of the delivery bond, and non-payment of the value thereof, the officer shall forthwith indorse the bond "Forfeited" and return the same to the clerk of the court or the justice of the peace from which the execution issued; whereupon, if the judgment remains unsatisfied in whole or in part, the clerk, or justice shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which instruction shall be indorsed by the clerk or justice on the execution.

RULE 646a - Sale of Real Property

Real property taken by virtue of any execution shall be sold at public auction, at the courthouse door of the county, unless the court orders that such sale be at the place where the real property is situated, **on the first Tuesday of the month, between the hours of ten o'clock a.m. and four o'clock, p.m.**

RULE 647 - Notice of Sale of Real Estate

The time and place of sale of real estate under execution, order of sale, or venditioni exponas, shall

1. be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county.
2. the first of said publications shall appear not less than twenty (20) days immediately preceding the day of sale.
3. said notice shall contain a statement of the authority by virtue of which the sale is to be made,
4. the time of the levy; and
5. the time and place of sale;
6. it shall also contain a brief description of the property to be sold, and
7. shall give the number of acres, original survey, located in the county, and
8. the name by which the land is most generally known, but it shall not be necessary for it to contain field notes.
9. publishers of newspapers shall charge the legal rate of Two (2) cents per word for the first insertion of such publication and One (1) cent per word for such subsequent insertions, or such newspapers shall be entitled to charge for such publication at a rate equal to but not in excess of the published work or line rate of the newspaper for such class of advertising.
10. if there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale.
11. the officer making the levy shall give the defendant, or his attorney, written notice of such sale either in person or by mail, which notice shall substantially conform to the foregoing requirements.

RULE 648 - “Courthouse Door” Defined

By the term “courthouse door” of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court. If from any cause there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the courthouse door. Where the courthouse, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where such house stood shall be deemed to be the courthouse door.

RULE 649 - Sale of Personal Property

Personal property levied on under execution shall

1. be offered for sale on the premises where it is taken in execution, or
2. at the courthouse door of the county,
3. or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place.

Personal property susceptible of being exhibited shall not be sold unless the same be present to the view of those attending the sale, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession in which case the interest of defendant may be sold and conveyed without the presence or delivery of the property.

When a levy is made upon livestock running at large on the range, it is not necessary that such stock, or any part thereof, be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

Note: Rule 649 is broken down in order to be more readily understandable.

Rule 650 - Notice of Sale of Personal Property

Previous notice of the time and place of the sale of any personal property levied on under execution shall be given by posting notice thereof for 10 days successively immediately prior to the day of sale at the courthouse door of any county and at the place where the sale is to be made.

RULE 651 - When Execution Not Satisfied

When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

RULE 653 - Resale of Property

When the terms of the sale shall not be complied with by the bidder the levying officer shall proceed to sell the same property again on the same day, if there be sufficient time, but if not, he shall re-advertise and sell the same as in the first instance.

RULE 654 - Return of Execution

The levying officer shall make due return of the execution, in writing and signed by him officially, stating concisely what such officer has done in pursuance of the requirements of the writ and of the law. The return shall be filed with the clerk of the court or the justice of the peace, as the case may be. The execution shall be returned forthwith if satisfied by the collection of the money or if ordered by the plaintiff or his attorney indorsed thereon.

RULE 655 - Return of Execution by Mail

When an execution is placed in the hands of an officer of a county other than the one in which the judgment is rendered, return may be made by mail; but money cannot be thus sent except by the direction of the party entitled to receive the same or his attorney of record.

EXAMPLES

1. An officer making a levy on personal property must take possession thereof.
Beaurline v. Sinclair Refining Co., 191 S.W. 2d 774
2. Under a general execution, all nonexempt property of the defendant in execution to the extent necessary to satisfy the judgment is liable to seizure and sale. Miller v. Dunagan,
123 S.W. 2d 363
3. Requisites of a sale under execution are a valid judgment, a proper levy, a sale, and the payment of the consideration. Burnam v. Blocker, 247 S.W. 2d 432
4. Where execution sale was held after return date stated in writ of execution, the sale was void and passed no title to purchaser - - - - Smith v. Adams, 333 S.W. 2d 892
5. Sheriff is not required to call out bid three times at sheriff’s sale, and attorney for judgment creditor need not be present at the sale. Brimberry v. First State Bank of Avinger,
500 S.W. 2d 675
6. Where sale by sheriff under execution issued on judgment was, in effect, little more than a private sale not made at the time, place, or in the manner required by law, the sale was void. Nebletet v. Slosson, 223 S.W. 2d 938
7. Where judgment creditor becomes purchaser at execution sale, judgment creditor may apply amount of his bid as a credit on his judgment. Prudential Corp. v. Baznman,
512 S.W. 85
8. Wrongful levy upon exempt property constitutes a “trespass.”
Wollner v. Darnell, 94 S.W. 2d 1225.

5.

GARNISHMENT

TEXAS CIVIL PRACTICE AND REMEDIES CODE

In general, a writ of garnishment is a process directed to one who has money or property in his possession belonging to the defendant, ordering such third person not to deliver or pay it to the defendant, but to deliver or hold it for plaintiff or as directed by the court. The grounds for a garnishment are set out below.

63.001 - Grounds

A writ of garnishment is available if:

1. an original attachment has been issued;
2. a plaintiff sues for a debt and makes an affidavit stating that:
 - (A) the debt is just, due, and unpaid;
 - (B) within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt; and
 - (C) the garnishment is not sought to injure the defendant or the garnishee; or
3. a plaintiff has a valid, subsisting judgment and makes an affidavit stating that, within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment.

63.002 - Who may issue writ

The clerk of a district or county court or a justice of the peace may issue a writ of garnishment returnable to his court.

63.003 - Effect of service

(a) After service of a writ of garnishment, the garnishee may not deliver any effects or pay any debt to the defendant. If the garnishee is a corporation or joint-stock company, the garnishee may not permit or recognize a sale or transfer of shares or an interest alleged to be owned by the defendant. (b) A payment, delivery, sale, or transfer made in violation of Subsection (a) is void as to the amount of the debt, effects, shares, or interest necessary to satisfy the plaintiff's demand.

63.004 - Current wages exempt

Except as otherwise provided by state or federal law, current wages, for personal service are not subject to garnishment. The garnishee shall be discharged from the garnishment as to any debt to the defendant for current wages.

NOTE: A writ of withholding on disposable earning has priority over any garnishment, attachment, execution or other assignments or orders. See 158.008, Family Code.

63.007 - Garnishment of funds held in inmate trust fund

(a) A writ of garnishment may be issued against an inmate trust fund held under the authority of the Texas Department of Criminal Justice under Section 501.014, Government Code, to encumber money that is held for the benefit of an inmate in the fund.

(b) The state's sovereign immunity to suit is waived only to the extent necessary to authorize a garnishment action in accordance with this section.

63.008 - Financial institution as garnishee

Service of a writ of garnishment on a financial institution names as the garnishee in the writ is governed by Section 59.008, Finance Code.

NOTE: Section 59.008 of the Finance Code provides:

(a) A claim against a customer of a financial institution shall be delivered or served as otherwise required or permitted by law at the address designated as the address of the registered agent of the financial institution in a registration filed with the secretary of state pursuant of Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution.

(b) If a financial institution files a registration statement with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.102, with respect to a Texas financial institution, a claim against a customer of the financial institution is not effective as to the financial institution if the claim is served or delivered to an address other than that designated by the financial institution in the registration as the address of the financial institution's registered agent.

(c) A financial institution that does not file a registration with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, of Section 201.103, with respect to a Texas financial institutional, is subject to service or delivery of claims against customers of the financial institution as otherwise provided by law.

TEXAS RULES OF THE COURT

RULE 658 - Application for writ of garnishment and order

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for a writ of garnishment. - - - - - The court may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

RULE 658a - Bond for garnishment

NOTE: Bond is to be filed with the officer authorized to issue such writ.

RULE 659 - Case docketed

When the foregoing requirements of these rules have been complied with, the judge, or clerk, or justice of the peace, as the case may be, shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant; and shall immediately issue a writ of garnishment directed to the garnishee, commanding him to appear before the court out of which the same is issued at or before 10 o'clock a.m. of the Monday next following the expiration of twenty days from the date the writ was served, if the writ is issued out of the district or county court; or the Monday next after the expiration of ten days from the date the writ was served, if the writ is issued out of the justice court. The writ shall command the garnishee to answer under oath upon such return date what, if anything, he is indebted to the defendant, and was when the writ was served, and what effects, if any, of the defendant he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the

defendant or have effects belonging to him in their possession.

RULE 661 - Form of Writ of Garnishment

“The State of Texas.

To E.F., Garnishee, greetings:

Whereas, in the _____ Court of _____ County if justice court, state also the number of the precinct), in a certain cause wherein A.B. is plaintiff and C.D. is defendant, the plaintiff, claiming an indebtedness against the said C.D. of _____ dollars, beside interest and costs of suit, has applied for a writ of garnishment against you, E.F.; therefore you are hereby commanded to be and appear before said court at _____ in said county (if the writ is issued from the county or district court, here proceed: ‘at 10 o’clock a.m. on the Monday next following the expiration of twenty days from the date of service hereof.’ If the writ is issued from a justice of the peace court, here proceed: ‘at or before 10 o’clock a.m. on the Monday next after the expiration of ten days from the date of service hereof.’ In either event, proceed as follows:) then and there to answer upon oath what, if anything, you are indebted to the said C.D., and were when the writ was served upon you, and what effects, if any, of the said C.D. you have in your possession and had when this writ was served, and what other persons, if any, within you knowledge, are indebted to the said C.D. or have effects belonging to him in their possession. You are further commanded NOT to pay to defendant any debt or to deliver to him any effects, pending further order of this court. Herein fail not, but make due answer as the law directs.”

RULE 662 - Delivery of Writ

The writ of garnishment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

RULE 663 - Execution and Return of Writ

The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

RULE 663a - Service of Writ on Defendant

The defendant shall be served in any manner prescribed for service of citation or as provided in Rule 21a with a copy of the writ of garnishment, the application, accompanying affidavits and orders of the court as soon as practicable following the service of the writ. There shall be prominently displayed on the face of the copy of the writ served on the defendant, ***in ten-point type** and in a manner calculated to advise a reasonable attentive person of its contents, the following:

*“To _____, Defendant:

You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:

“YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.”

RULE 664 - Defendant may replevy

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff, in the amount fixed by the court’s order, or, at the defendant’s option, for the value of the property or indebtedness sought to be replevied (to be estimated by the officer’s), plus one year’s interest thereon at the legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.-----

On reasonable notice to the opposing party (which maybe less than three days) the defendant shall have the right to move the court, for substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property of the defendant’s to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant’s property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property; may be substituted.

RULE 668 - Judgment when garnishee is indebted

Should it appear from the answer of the garnishee or should it be otherwise made to appear and be found by the court that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount is in excess of the amount of the plaintiff’s judgment against the defendant with interest and costs, in which case, judgment shall be rendered against the garnishee for the full amount of the judgment already rendered against the defendant, together with interest and costs of the suit in the original case and also in the garnishment proceedings. **If the garnishee fail or refuse to pay such judgment rendered against him, execution shall issue thereon in the same manner and under the same conditions as is or may be provided for the issuance of execution in other cases.**

RULE 669 - Judgment for effects

Should it appear from the garnishee's answer, or otherwise, that garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, including any certificate of stock in any corporation or joint stock company, **the court shall render a decree ordering sale of such effects under execution in satisfaction of plaintiff's judgment and directing the garnishee to deliver them, or so much thereof as shall be necessary to satisfy plaintiff's judgment, to the proper officer for that purpose.**

RULE 670 - Refusal to deliver effects

Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding rule, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal,

whereupon on motion of the plaintiff, the garnishee shall be cited to show cause upon a date to be fixed by the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

RULE 672 - Sale of Effects

The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the officer making such sale shall execute a transfer of such effects or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold.

RULE 675 - Docket and notice

The clerk of the court or the justice of the peace, on receiving certified copies filed in the county of the garnishee's residence under the provisions of the statutes, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and issue a notice to the garnishee, stating that his answer has been so controverted, and that such issue will stand for trial on the docket of such court. Such notice shall be directed to the garnishee, be dated and tested as other process from such court, and served by delivering a copy thereof to the garnishee. It shall be returnable, if issued from the district or county court, at ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of its service; and if issued from the justice court, to the next term of such court convening after the expiration of twenty days after the service of such notice.

RULE 679 - Amendment

Clerical errors in the affidavit, bond, or writ of garnishment or the officer's return thereof may upon application in writing to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize by an order in the minutes of the court (or noted on the docket of the justice of the peace), provided such amendment appears to the judge or justice to be in furtherance of justice.

EXAMPLES

1. “Garnishment” is a statutory proceeding whereby the property, money, or credits of a debtor in the possession of another are applied to the payment of a debt. Jamison v. National Loan Investors, L.P. 4 S.W. 3rd 465
2. Under the rule, an officer’s return of a writ of garnishment is governed by the same rules applicable to the return of citation. Curry Motor Freight, Inc. v. Ralston Purina Co. 565 S.W. 105
3. Sheriff or constable executing a writ of garnishment is not an “agent” of either party, since the sheriff or constable is not subject to the parties control; Rules of Civil Procedure provide that only a sheriff or constable may deliver the writ to the garnishee, and the sheriff or constable carries out a duty prescribed by the state constitution or the legislature when executing a writ. Jamison v. National Loan Investors, L.P. 4 S.W. 3rd 465
4. No control or custody over debtor’s property can be gained by debtor’s answer in garnishment proceeding **without writ of garnishment being properly served on debtor.**

6.

INJUNCTION

The Writ of Injunction is a writ that is issued by the court to a defendant and directs him to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.

A temporary Writ of Injunction is issued by the court at the institution of a suit, to restrain the defendant from doing or continuing some act, the right to which is in dispute, which may either be dismissed or made permanent, as soon as the rights of the parties are determined.

TEXAS RULES OF THE COURT

RULE 683 - Granting an injunction

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance. - - - - -

RULE 686 - Citation (Excerpts)

Upon the filing of such petition and order not pertaining to a suit pending in the court, the clerk of such court shall issue citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court: - - - -

RULE 687 - Requisites of writ

The writ of injunction shall be sufficient if it contains substantially the following requisites:

- (a) Its style shall be, "The State of Texas".
- (b) It shall be directed to the person or persons enjoined.
- (c) It must state the names of the parties to the proceedings, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.
- (d) It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.
- (e) If it is a temporary restraining order, it shall state the day and time set for hearing, which shall not exceed fourteen days from the date of the court's order granting such temporary restraining order; but if it is a temporary injunction, issued after notice, it shall be made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, as in the case of ordinary citations.
- (f) It shall be dated and signed by the clerk officially and attested with the seal of the office and the date of its issuance must be indorsed thereon.

RULE 688 - Clerk to issue writ

When the petition, order of the judge and bond have been filed, the clerk shall issue the temporary restraining order or temporary injunction, as the case may be, in conformity with the terms of the order, and **deliver the same to the sheriff or any constable of the county of the residence of the person enjoined, or to the applicant, as the latter shall direct.** If several persons are enjoined, residing in different counties, the clerk shall issue such additional copies of the writ as shall be requested by the applicant.

RULE 689 - Service and return

The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. The original shall be returned to the court from which it issued on or before the return day named therein with the action of the officer indorsed thereon or annexed thereto showing how and when he executed the same.

RULE 692 - Disobedience of injunction

Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating what person is guilty of such disobedience and describing the acts constituting the same; **and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of any county, and requiring such office to arrest the person therein named if found within his county and have him before the court of judge at the time and place named in such writ; or said court or judge may issue a show**

cause order, directing and requiring such person to appear on such date as may be designated and show cause why he should not be adjudged in contempt of court. On return of such attachment or show cause order, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, may commit such person to jail without bail until he purges himself of such contempt, in such manner and form as the court or judge may direct.

Note: When a writ of injunction or writ of attachment is delivered to the sheriff or constable it is suggested that you first should read what the court is requiring you to do. Proceed to carry the order out and make a return as you would ordinarily do on executing the writ. There are time limits and you need to meet those deadlines.

CHAPTER 8

JUDGMENTS - TURN OVER ORDER

TEXAS CIVIL PRACTICE AND REMEDIES CODE

31.001 - Passage of title

A judgment for the conveyance of real property or the delivery of personal property may pass title to the property without additional action by the party against whom the judgment is rendered.

31.002 - Collection of judgment through court proceeding

(a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that:

- (1) cannot readily be attached or levied on by ordinary legal process; and
- (2) is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

(b) The court may:

- (1) order the judgment debtor to **turn over** nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a **designated sheriff or constable for execution**;
- (2) otherwise apply the property to the satisfaction of the judgment; or
- (3) appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditors to the extent required to satisfy the judgment.

(c)(d)&(e) - - - - -

(f) A court may not enter or enforce an order under this section that requires the turnover of the proceeds of, or the disbursement of, property exempt under any statute, including Section 42.0021, Property Code. This sub-section does not apply to the enforcement of a child support obligation or a judgment for past due child support.

(g) - - - - -

31.0025 - Authority of court to order turnover of wages

(a) Notwithstanding any other law. A court may not, at any time before a judgment debtor is paid wages for personal services performed by the debtor, enter or enforce an order that requires the debtor or any other person to turn over the wages for the satisfaction of the judgment.

(b) This section applies to wages in any form, including paycheck, cash, or property.

(c) This section does not apply to the enforcement of a child support obligation or a judgment for past due child support.

31.010 - Turnover by financial institution

(a) A **financial institution** that receives a request to **turn over assets** or financial information of a judgment debtor to a judgment creditor or a receiver under a turnover order or receivership under Section 31.002 shall be provided and may rely on:

- (1) a certified copy of the order or injunction of the court; or
- (2) a certified copy of the order of appointment of a receiver under Section 64.001, including a certified copy of:

(A) any document establishing the qualification of the receiver under Section 64.021;

(B) the sworn affidavit under Section 64.022; and

(C) the bond under Section 64.023.

(b) A financial institution that complies with this section is not liable for compliance with a court order, injunction, or receivership authorized by Section 31.002 to:

- (1) the judgment debtor;
- (2) a party claiming through the judgment debtor;
- (3) a co-depositor with the judgment debtor; or
- (4) a co-borrower with the judgment debtor.

(c) A financial institution that complies with this section is entitled to recover costs, including coping costs, research costs, and, if there is a contest, reasonable attorney's fees.

(d) In this section, "financial institution" means a state or national bank, state or federal savings and loan association, state or federal savings bank, state or federal credit union, foreign bank, foreign bank agency, or trust company.

CHAPTER 9

FORCIBLE ENTRY AND DETAINER

TEXAS PROPERTY CODE

Forcible Entry and Detainer is a cause of action by the plaintiff to regain control of his real property that is being held illegally by defendant. A suit for rent due may also be joined in this civil suit in the court that has jurisdiction.

24.001 - Forcible entry and detainer

(a) A person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.

(b) For the purpose of this chapter, a forcible entry is:

- (1) an entry without the consent of the person in actual possession of the property;
- (2) an entry without the consent of a tenant at will or by sufferance; or
- (3) an entry without the consent of a person who acquired possession by forcible entry.

24.002 - Forcible detainer

(a) A person who refused to surrender possession of real property on demand commits a forcible detainer if the person:

1. is a tenant or a subtenant willfully and without force holding over after the

termination of the tenant's right of possession;

2. is a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease; or

3. is a tenant of a person who acquired possession by forcible entry.

(b) The demand for possession must be made in writing by a person entitled to possession of the property and must comply with the requirements for notice to vacate under Section 24.005.

24.004 - Jurisdiction

A justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits.

24.005 - Notice to vacate prior to filing eviction suit

(a) If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least 3 days written notice to vacate the premises before the landlord files forcible detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. A landlord who files a forcible detainer suit on grounds that the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 91.001.

(Section 91.001 of the Texas Property Code - Notice for terminating certain Tenancies

(a) A monthly tenancy or a tenancy from month to month may be terminated by the tenant or the landlord giving notice of termination to the other.

(b) If a notice of termination is given under Subsection (a) and if the rent-paying period is at least one month, the tenancy terminates on whichever of the following days is the later;

(1) the day given in the notice for termination; or

(2) one month after the day on which the notice is given.

(c) If a notice of termination is given under Subsection (a) and if the rent-paying period is less than a month, the tenancy terminates on whichever of the following days is the later:

(1) the day given in the notice for termination; or

(2) the day following the expiration of the period beginning on the day on which notice is given and extending for a number of days equal to the number of days in the rent-paying period.

(d) If a tenancy terminates is given on a day that does not correspond to the beginning or end of a rent-paying period, the tenant is liable for rent only up to the date of termination.

(e) Subsections (a)(b)(c) and (d) do not apply if:

(1) a landlord and a tenant have agreed in an instrument signed by both parties on a different period of notice to terminate the tenancy or that no notice is required; or

(2) there is a breach of contract recognized by law.)

(b) If the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three days' written notice to vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.

If a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent under this subsection if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lien holder or the purchaser at foreclosure not later than the fifth day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. Before a foreclosure sale, a foreclosing lien holder may give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure.

(c) If the occupant is a tenant of a person who acquired possession by forcible entry, the landlord must give the person at least three days' written notice to vacate before the landlord files a forcible detainer suit.

(d) In all situations in which the entry by the occupant was forcible entry under Section 24.001, the person, entitled to possession must give the occupant oral or written notice to vacate before the landlord files a forcible entry and detainer suit. The notice to vacate under this subsection may be to vacate immediately or by a specified deadline.

(e) If the lease or applicable law requires the landlord to give a tenant an opportunity to respond to a notice of proposed eviction, a notice to vacate may not be given until the period provided for the tenant to respond to the eviction notice has expired.

(f) The notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question. If the dwelling has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to leave the notice to vacate on the inside of the main entry door, the landlord may securely affix the notice on the outside of the main entry door.

(g) The noticed period is calculated from the day on which the notice is delivered.

(h) A notice to vacate shall be considered a demand for possession for purpose of Subsection (b) of Section 2.402.

(i) If before the notice to vacate is given as required by this section the landlord has given a written notice or reminder to the tenant that rent is due and unpaid, the landlord may include in the notice to vacate required by this section a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice.

24.0061 - Writ of possession

(a) A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. In this chapter, "premises" means the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally.

(b) A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default.

(c) The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.

(d) The writ of possession shall order the officer executing the writ to:

(1) post a written warning of at least 8 ½ by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and

(2) **when the writ is executed:**

(A) deliver possession of the premises to the landlord;

(B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;

(C) instruct tenant to remove or to allow the landlord, the landlord's representative, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and

(D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and **not while it is raining, sleeting, or snowing.**

(e) The writ of possession shall authorized the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.

(f) The officer may not require the landlord to store the property.

(g) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(h) A sheriff or constable may use reasonable force in executing a writ under this section.

24.0062 - Warehouseman's lien

(a) If personal property is removed from a tenant's premises as the result of an action brought under this chapter and stored in a bonded or insured public warehouse, the warehouseman has a lien on the property to the extent of any reasonable storage and moving charges incurred by the warehouseman. The lien does not attach to any property until the property has been stored by the warehouseman.

NOTE: (b)(c)(d)(e)(f)(g)(h)(i)(j)(k) does not effect the duties of the sheriff or constable but merely set out the rights of the warehouseman and the tenant. If you desire to understand these rights you will need to obtain a complete copy of 24.0062. If you buy a copy of the Texas Property Code or have access to the Black Statutes they will contain this information.

24.011 - Non-lawyer representation

In eviction suits in justice court for non-payment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any eviction suit in justice court, an authorized agent requesting or obtaining a default judgment need not be an attorney.

TEXAS CIVIL PRACTICE AND REMEDY CODE

15.084 - Forcible entry and detainer

A suit for forcible entry and detainer shall be brought in the precinct in which all or part of the premises is located.

TEXAS RULES OF THE COURT

RULE 738 - May sue for rent

A suit for rent may be joined with an action of forcible entry and detainer, wherever the suit for rent is within the jurisdiction of the justice court. In such case the court in rendering judgment in the action of forcible entry and detainer, may at the same time render judgment for any rent due the landlord by the renter; provided the amount thereof is within the jurisdiction of the justice court.

RULE 739 - Citation

When the party aggrieved or his authorized agent shall file his written sworn complaint with such justice, the justice shall immediately issue citation directed to the defendant or defendants commanding him to appear before such justice at a time and place named in such citation, such time being not more than 10 day nor less than 6 days from the date of service of the citation.

The citation shall inform the parties that, upon timely request and payment of a jury fee no later than five days after the defendant is served with citation, the case shall be heard by a jury.

RULE 740 - Complainant may have possession

The party aggrieved may, at the time of filing his complaint, or thereafter prior to final judgment in the justice court, execute and file a possession bond to be approved by the justice in such amount as the justice may fix as the probable amount of costs of suit and damages which may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages as shall be adjudged against plaintiff.

The defendant shall be notified by the justice court that plaintiff has filed a possession bond. Such notice shall be served in the same manner as service of citation and shall inform the defendant of all of the following rules and procedures:

- (a) Defendant may remain in possession if defendant executes and files a counter-bond prior to the expiration of six days from the date defendant is served with notice of the filing of plaintiff's bond. Said counter-bond shall be approved by the justice and shall be in such amount as the justice may fix as the probable amount of costs of suit and damages which may result to plaintiff in the event possession has been improperly withheld by defendant;
- (b) Defendant is entitled to demand and he shall be granted a trial to be held prior to the expiration of six days from the date defendant is served with notice of the filing of plaintiff's possession bond;
- (c) **If defendant does not file a counter-bond and if defendant does not demand that trial be held prior to the expiration of said six-day period. The constable of the precinct or the sheriff of the county where the property is situated, shall place the plaintiff in possession of the property promptly after the expiration of six days from the date defendant is served with notice of the filing of plaintiff/s possession bond; and**
- (d) **If, in lieu of a counter-bond, defendant demands trial within said six-day period, and if the justice of the peace rules after trial that plaintiff is entitled to possession of the property, the constable or sheriff shall place the plaintiff in possession of the property five days after such determination by the justice of the peace.**

RULE 741 - Requisites of complaint

The complaint shall describe the land, tenements or premises, the possession of which is claimed with sufficient certainty to identify the same, and it shall also state the facts which entitled the complainant to the possession and authorize the action under Section 24.001-24.004, Texas Property Code.

Rule 742 - Service of citation

The officer receiving such citation shall execute the same by delivering a copy of it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least six days before the return day thereof; and on or before the day assigned for trial he shall return such citation, with his action written thereon, to the justice who issued the same.

RULE 742a - Service by delivery to premises

If the sworn complaint lists all home and work addresses of the defendant which are known to the person filing the sworn complaint and if it states that such person knows of no other home or work addresses of the defendant in the county where the premises are located, service of citation maybe by delivery to the premises in question as follows:

If the officer receiving such citation is unsuccessful in serving such citation under Rule 742, the officer shall no later than five days after receiving such citation execute a sworn statement that the officer has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located as may be shown on the sworn complaint, stating the times and places of attempted service. Such sworn statement shall be filed by the officer with the justice who shall promptly

consider the sworn statement of the officer. The justice may then authorize service according to the following:

(a) The officer shall place the citation inside the premises by placing it through a door mail chute or by slipping it under the front door; and if neither method is possible or practical, the officer shall securely affix the citation to the front door or main entry to the premises.

(b) The officer shall that same day or the next day deposit in the mail a true copy of such citation with a copy of the sworn complaint attached thereto, addressed to defendant at the premises in question and sent by first class mail;

(c) The officer shall note on the return of such citation, the date of delivery under (a) above and the date of mailing under (b) above; and

(d) Such delivery and mailing to the premises shall occur at least six days before the return day of the citation; and on or before the day assigned for trial he shall return such citation with his action written thereon, to the justice who issued the same.

It shall not be necessary for the aggrieved party or his authorized agent to make request for or motion for alternative service pursuant to this rule.

RULE 743 - Docketed

The cause shall be docketed and tried as other cases. If the defendant shall fail to enter an appearance upon the docket in the justice court or file answer before the case is called for trial, the allegations for the complaint may be taken as admitted and judgment by default entered accordingly. The justice **shall have authority to issue subpoenas for witnesses to enforce their attendance, and to punish for contempt.**

RULE 744 - Demanding jury

Any party shall have the right of trial by jury, by making a request to the court **on or before five days from the date the defendant is served with citation,** and by paying a jury fee of five dollars. Upon such request, a jury shall be summoned as in other cases in justice court.

RULE 746 - Only issue

In case of forcible entry or forcible detainer under Sections 24.001-24.008, Texas Property Code, the only issue shall be as to the right to actual possession; and the merits of the title shall not be adjudicated.

RULE 747a -Representation by agents

In forcible entry and detainer cases for non-payment of rent or holding over beyond the rental term, the parties may represent themselves or be represented by their authorized agents in justice court.

RULE 749 - May appeal (Excerpts)

Either party may appeal from a final judgment in such case, to the county court of the county in which the judgment is rendered - - - - -

RULE 749a - Pauper's affidavit (Excerpts)

If appellant is unable to pay the costs of appeal, or file a bond as required by Rule 749, he shall nevertheless be entitled to appeal - - - -

No writ of possession may issue pending the hearing by the county judge of the appellant's right to appeal on a pauper's affidavit. If the county judge disapproves the pauper's affidavit, appellant may perfect his appeal by filing an appeal bond in the amount as required by Rule 749 within five days thereafter. **If no appeal bond is filed within five days, a writ of possession may issue.**

RULE 755 -Writ of possession

The writ of possession, or execution, or both, shall be issued by the clerk of the county court according to the judgment rendered, and the same shall be executed by the sheriff or constable, as in other cases; and such writ of possession shall not be suspended or superseded in any case by appeal from such final judgment in the county court, unless the premises in question are being used as the principal residence of a party.

LIEN

NOTE: There are three types of liens that a landlord may claim and they are as follows:

- 1. Agricultural lien (54.001, Texas Property Code)**
- 2. Building lien (54.021, Texas Property Code)**
- 3. Residential lien (54.041, Texas Property Code)**

The sheriff or constable has no responsibility under these liens until the justice court issues a Distress Warrant. As to service of a Distress Warrant please refer to the section on this subject.

LANDLORD AND TENANT

NOTE: If you are interested in the laws applying to landlord and tenant please see Sections 91.001 etc. and 92.001. The sheriff or constable would be involved in the landlord and tenant relationship if a landlord has locked a tenant out of the leased premises. The tenant may regain possession of the premises as provided by Section 92.009, Texas Property Code.

- (b) The tenant must file with the justice court in the precinct in which the rental premises are located a sworn complaint for reentry, specifying the facts of the alleged unlawful lockout by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful lockout.**
- (c) If the tenant has complied with Sub-section (b) and if the justice reasonably believes an unlawful lockout has likely occurred, the justice may issue, ex parte, a writ of reentry that entitles the tenant to immediate and temporary possession of the premises, pending a final hearing on the tenant's sworn complaint for reentry.**

- (d) The writ of reentry must be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer action. A sheriff or constable may use reasonable force in executing a writ of reentry under this section.
- (e) The landlord is entitled to a hearing on the tenant's sworn complaint for reentry. The writ of reentry must notify the landlord of the right to a hearing. The hearing shall be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.
- (f) & (g) apply to the landlord.
- (h) If a writ of possession is issued, it supersedes a writ of reentry. - - -

CHAPTER 10

FINANCE CODE

INTEREST RATES TO BE CHARGED ON JUDGMENT

304.001 - Interest rate required in judgment

A money judgment of a court in this state must specify the post-judgment interest rate applicable to that judgment.

NOTE: The court must specify in his judgment the post-judgment interest rate if it is a money judgment. It is important that the process server read the judgment and determine if he is required to collect post-judgment interest. The rate of interest should be set out in the judgment.

304.002 - Judgment interest rate: on time price differential in contract

A money judgment of a court of this state on a contract that provides for interest or time price differential earns post-judgment interest at a rate equal to the lessor of:

- (1) the rate specified in the contract, which may be a variable rate; or
- (2) 18 percent a year.

304.003 - Judgment interest rate: interest rate or time price differential not in contract

(a) A money judgment of a court of this state to which Section 304.002 does not apply, including court costs awarded in the judgment and prejudgment interest, if any, earns post-judgment interest at the rate determined under this section.

(b) On the 15th day of each month, the consume credit commissioner shall determine the post-judgment interest rate to be applied on a money judgment rendered during the succeeding calendar month.

(c) The post-judgment interest rate is:

- (1) the auction rate quoted on a discount basis for 52-week treasury bills issued by the United State government as most recently published by the Federal

- Reserve Board before the date of computation.
- (2) 10 percent a year if the auction rate described by Subdivision (1) is less than 10 percent; or
 - (3) 20 percent a year if the auction rate described by Subdivision (1) is more than 20 percent.

304.004 - Publication of judgment interest rate

The consumer credit commissioner shall send to the secretary of state the post-judgment interest rate for publication, and the secretary shall publish the rate in the Texas Register. (www.sos.state.tx.us) or call (Consumer Credit Commissioner at 1- 800-538-1579).

304.005 - Accrual of judgment interest

(a) Except as provided by Subsection (b), post-judgment interest on a **money judgment** of a court in this state accrues during the period beginning on the date the judgment is rendered and ending on the date the judgment is satisfied.

(b) If a case is appealed and a motion for extension of time to file a brief is granted for a party who was a claimant at trial, interest does not accrue for the period of extension.

304.006 - Compounding of judgment interest

Post-judgment interest on a judgment of a court in this state compounds annually.

304.007 - Judicial notice of judgment interest rate

A court of this state shall take judicial notice of a published post-judgment interest rate.

NOTE: Check with your bank, high school math teacher or county auditor on how to figure compounding of judgment interest, if you have a question.

CHAPTER 11

TEXAS PROPERTY CODE

MANUFACTURED HOME TENANCIES

The 123rd Legislature at its regular session in-acted legislation concerning “Manufactured Home Tenancies” (Sec. 94.001 - 94.303 of the Texas Property Code). This legislation became effective on April 1, 2002. Since this is new legislation there are no Attorney General Opinions nor court cases interpreting this subject matter.

Most of this legislation applies to the landlord and the tenant and requires no action by the Sheriff.

There appears to be two sections that a sheriff would be interested in. One that would apply to a governmental agency for informational purposes (Sec. 94.010) and the other by the sheriff to carry out a court order as it applies to “Forcible Entry and Detainer” (Sec.94.256).

CHAPTER 12

TAX CODE - PROPERTY

DELINQUENT TAX SALES

From time to time you will be called upon by the Tax Assessor-Collector to execute a “Tax Warrant which he/she will obtain from a court of competent jurisdiction. You will follow the order of the court set out in the Tax Warrant the same as you do with the other writs that are executed by you.

You will find that executing a Tax Warrant including the sale of the personal or real property is handled a little bit differently than under a plain execution. It is important that you understand the statutes which are set out below in order to complete a delinquent tax sale. Either the County Attorney or the Tax Attorney hired by the county should be available to help you if you have any questions as how to proceed. See Attorney General Opinion GA - 0140, page 132 of this manual.

SEIZURE OF PERSONAL PROPERTY

33.21 - Property Subject to Seizure

- (a) A person’s personal property is subject to seizure for the payment of a delinquent tax, penalty and interest he owes a taxing unit on property.
- (b) A person’s personal property is subject to seizure for the payment of a tax imposed by taxing unit on the person’s property before the tax becomes delinquent if:
 - (1) the collector discovers that property on which the tax has been or will be imposed is about to be:
 - (A) removed from the county; or
 - (B) sold in a liquidation sale in connection with the cessation of a business;
 - and
 - (2) the collector knows of no other personal property in the county from which the tax may be satisfied.
- (c) Current wages in the possession of an employer are not subject to seizure
- (d) In this subchapter, “personal property” means:
 - (1) tangible personal property;
 - (2) cash on hand;
 - (3) notes or accounts receivable, including rents and royalties;
 - (4) demand or time deposits; and
 - (5) certificates of deposit.

33.22 - Institution of Seizure

(a) At anytime after a tax becomes delinquent, a collector may apply for a tax warrant to any court in any county in which the person liable for the tax has personal property. If more than one collector participates in the seizure, all may make a joint application.

(b) A collector may apply at any time for a tax warrant authorizing seizure of property as provided by Subsection (b) of Section 33.21 of this code.

(c) the court shall issue the tax warrant if the applicant shows by affidavit that: - - -

- -

(d) and - (e)

33.23 - Tax Warrant

(a) A tax warrant shall direct a peace officer in the county and the collector to seize as much of the person's personal property as may be reasonably necessary for the payment of all taxes, penalties, interest, and attorney's fees including in the application and all costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to the officer executing the warrant the name and the address if known of any other person having an interest in the property.

(b) A bond may not be required of a taxing unit for issuance or delivery of a tax warrant and a fee or court cost may not be charged for issuance or delivery of a warrant.

(c) After a tax warrant is issued, the collector or peace officer shall take possession of the property pending its sale. The person against whom a tax warrant is issued or another person having possession of property of the person against whom a tax warrant is issued shall surrender the property on demand. Pending the sale of the property, the collector or peace officer may secure the property at the location where it is seized or may move the property to another location.

(d) A person who possesses personal property owned by the person against whom a tax warrant is issued and who surrenders the property on demand is not liable to any person for the surrender. At the time of surrender, the collector shall provide the person surrendering the property a sworn receipt describing the property surrendered.

(e) Subsection (d) does not create an obligation on the part of a person who surrenders property owned by the person against whom a tax warrant is issued that exceeds or materially differs from the person's obligation to the person against whom the tax warrant is issued.

33.24 - Bond for Payment for Taxes

A person may prevent seizure of property or sale of property seized by delivering to the collector a cash or security bond conditioned on payment of the tax before delinquency. The bond must be approved by the collector in an amount determined by him, but he may not require an amount greater than the amount of tax if imposed or the collector's reasonable estimate of the amount of tax if not yet imposed.

33.25 - Tax Sale: Notice; Method; Disposition of Proceeds

(a) After a seizure of personal property, the collector shall make reasonable inquiry to determine the identity and to ascertain the address of any person having an interest in the property other than the person against whom the tax warrant is issued. The collector shall provide in writing the name and address of each other person the collector identifies having an interest in the property to the peace officer charged with executing the warrant. The peace officer shall deliver as soon as possible a written notice stating the time and place of the sale and briefly describing the property seized to the person against whom the

warrant is issued and to any other person having an interest in the property whose name and address the collector provided to the peace officer. The posting of the notice and sale of the property shall be conducted:

(1) in a county other than a county to which Subdivision (2) applies, by the peace officer in the manner required for the sale under execution of personal property; or

(2) in a county having a population of three million or more:

(A) by the peace officer or collector, as specified in the warrant, in the manner required for the sale under execution of personal property; or

(B) under agreement authorized by Subsection (b).

(b) The commissioners court of a county having a population of three million or more by official action may authorize a peace officer or the collector for the county charged with selling property under this subchapter by public auction to enter into an agreement with a person who holds an auctioneer's license to advertise the auction sale of the property and to conduct the auction sale of the property. The agreement may provide for on-line bidding and sale.

(c) The commissioners court of a county that authorizes a peace officer or the collector for the county to enter into an agreement under Subsection (b) may by official action authorize the peace officer or collector to enter into an agreement with a service provider to advertise the auction and to conduct the auction sale of the property or to accept bids during the auction sale of the property under Subsection (b) using the Internet.

(d) The terms of an agreement entered into under Subsection (b) or (c) must be approved in writing by the collector for each taxing unit entitled to receive proceeds from the sale of the property. An agreement entered into under Subsection (b) or (c) is presumed to be commercially reasonable, and the presumption may not be rebutted by any person.

(e) Failure to send or receive a notice required by this section does not affect the validity of the sale or title to the seized property.

(f) The proceeds of a sale of property under this section shall be applied to:

(1) any compensation owed to or any expense advanced by the license auctioneer under an agreement entered into under Subsection (b) or a service provider under an agreement entered into under Subsection (c);

(2) all usual costs, expenses, and fees of the seizure and sale, payable to the peace officer conducting the sale;

(3) all additional expenses incurred in advertising the sale or in removing, storing, preserving, or safeguarding the seized property pending its sale;

(4) all usual court costs payable to the clerk of the court that issued the tax warrant; and

(5) taxes, penalties, interest, and attorney's fees including in the application for warrants.

(g) The peace officer or licensed auctioneer conducting the sale shall pay all proceeds for the sale to the collector designated in the tax warrant for distribution as required by Subsection (f).

(h) After a seizure of personal property defined by Section 33.21(d)(2)-(5), the collector shall apply the seized property toward the payment of the taxes, penalties, interest, and attorney's fees included in the application for warrant and all costs of the seizure as required by Subsection (f).

(i) After a tax warrant is issued, the seizure or sale of the property may be canceled and terminated at any time by the applicant or an authorized agent or attorney of the

applicant.

NOTE: A peace officer, as defined by article 2.12 of the CCP, may execute a tax warrant for the seizure of personal property under section 33.23 of the Tax Code, while a sheriff or constable is the only type of peace officer that may execute a tax warrant for seizure of real property under Section 33.93 of the same code. Likewise, any peace officer may seize personal property that is the subject of a tax warrant, while a sheriff or constable may seize real property. Seizure requires possession or control of the property. A peace officer who seizes personal property is authorized, but not required, by statute to relinquish possession to the tax assessor-collector. On the other hand, Section 33.93 requires the sheriff or constable to turn the possession of seized real property over to the assessor-collector. OpAtty.Gen.2003, No.GA-0140.

Section 33.23 does not specify who is to prepare the inventory or personal property seized in accordance with a tax warrant. Consistent with case law and with practical considerations, the officer who executes the warrant must prepare the inventory. OpAtty.Gen.2003, No.GA-0140.

DELINQUENT TAX SUITS

33.41 - Suit to Collect Delinquent Tax

(a) at any time after its tax on property becomes delinquent, a taxing unit may file suit to foreclose the lien securing payment of the tax, to enforce personal liability for the tax or both. The suit must be in a court of competent jurisdiction for the county in which the tax was imposed.

(b)- (h) - - - -

33.50 Adjudged Value

(a) - - - -

(b) if the judgment in a suit to collect a delinquent tax is for the foreclosure of a tax lien on property, the order of sale shall specify that the property may be sold to a tax unit that is a party to the suit or to any other person, other than a person owning an interest in the property or any party to the suit that is not a taxing unit, for the market value of the property stated in the judgment or the aggregate amount of the judgments against the property, whichever is less.

(c) The order of sale shall also specify that the property may not be sold to a person owning an interest in the property or to a person who is a party to the suit other than a taxing unit unless:

- (1) that person is the highest bidder at the tax sale; and
- (2) the amount bid by the person is equal to or greater than the aggregate amount of the judgments against the property, including all costs of suit and sale.

33.51 - Writ of Possession

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the

judgment shall provide for the issuance by the clerk of said court of a writ of possession to the purchaser at the sale or to the purchaser's assigns no sooner than 20 days following the date on which the purchaser's deed from the sheriff or constable is filed or record.

(b) The officer charged with executing the writ shall place the purchaser or the purchaser's assigns in possession of the property described in the purchaser's deed without further order from any court and in the manner provided by the writ, subject to any notice to vacate that may be required to be given to a tenant under Section 24.005(b), Property Code.

(c) The writ of possession shall order the officer executing the writ to:

(A) deliver possession to the premises or the purchaser's assigns;

(B) instruct the occupants to immediately leave the premises and, if the occupants fail or refuse to comply, physically remove them from the premises; and

(C) instruct the occupants to remove, or to allow the purchaser or purchaser's assigns, representatives, or other persons acting under the officer's supervision to remove, all personal property from the premises; and

(D) place, or have an authorized person place, the removed personal property outside the premises at a nearby location, but not so as to block a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

(d) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, all or part of the personal property at no cost to the purchaser, the purchaser's assign, or the officer executing the writ. The officer may not require the purchaser or the purchaser's assigns to store the personal property.

(e) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(f) The warehouseman's lien on stored property, the officer's duties, and the occupants' right of redemption as provided by Section 24.0062, property Code, are all applicable with respect to any personal property that is removed under Subsection(d).

(g) A sheriff or constable may use reasonable force in executing a writ under this section.

(h) If a taxing unit is a purchaser and is entitled to a writ of possession in the taxing unit's name:

(1) a bond may not be required of the taxing unit for issuance or delivery of a writ of possession; and

(2) a fee of court cost may not be charged for issuance or delivery of a writ of possession

(i) In this section:

(1) "Premises" means all of the property described in the purchaser's deed, including the buildings, dwellings, or other structures located on the property.

(2) "Purchaser" includes a taxing unit to which property is bid off under Section 34.01(j).

33.53 - Order of Sale; Payment Before Sale

(a) If judgment in a suit to collect a delinquent tax is for foreclosure of a tax lien, the court shall order the property sold in satisfaction of the amount of the judgment.

(b) On application by a taxing unit that is a party to the judgment, the district clerk shall prepare and order to an officer authorized to conduct execution sales ordering the sale of the property. If more than one parcel of property is included in the judgment, the taxing unit may specify particular parcels to be sold. A taxing unit may request more than one order of sale as necessary to collect all amounts due under the judgment.

(c) an order of sale:

(1) shall be returned to the district clerk as unexecuted if not executed before 181st day after the date the order is issued; and

(2) may be accompanied by a copy of the judgment and a bill of costs attached to the order and incorporate the terms of the judgment or bill of costs by reference.

(d) A judgment or a bill of costs attached to the order of sale is not required to be certified.

(e) If the owner pays the amount of the judgment before the property is sold, the taxing unit shall:

(1) release the tax lien held by the taxing unit on the property; and

(2) file for record with the clerk of the court in which the judgment was rendered a release of the lien.

SEIZURE OF REAL PROPERTY

33.91 - Property Subject to Seizure by Municipality

(a) After notice has been provided to a person, the person's real property, whether improved or unimproved, is subject to seizure by a municipality for the payment of delinquent ad valorem taxes, penalties, and interest the person owns on the property and the amount secured by a municipal health or safety lien on the property if: (Abandoned property for at least one year, etc)

(The city must meet certain requirements of the statute and if the municipality determines that seizure of the property under this subchapter for the payment of the delinquent taxes, penalties, and interest, and of a municipal health and safety lien on the property , would be in the best interest of the municipality and the other taxing units after determining that the sum of all outstanding tax and municipal claims against the property plus the estimated costs under Section 33.48of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale.)

33.911 - Property Subject to Seizure by County

(a) After notice has been provided to a person, the person's real property, whether improved or unimproved, is subject to seizure by a county for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property if: (Abandoned property for at least one year, etc.)

(The county must meet certain requirements of the statute and if the county tax assessor determines that seizure of the property would be in the best interest of the county he/she may proceed to obtain a Tax Warrant)

33.912 - Notice

(a) A person is considered to have been provided the notice required by Sections 33.91 and 33.911 if by affidavit or otherwise the collector shows that the assessor or collector for the municipality or county mailed the person each bill for municipal or county taxes required to be sent the person by Section 31.01:

(1) in each of the five preceding years, if the taxes on the property are delinquent for each of those years; or

(2) in each of the three preceding years; if:

(A) the taxes on the property are delinquent for each of those years; and

(B) a lien on the property has been created on the property in favor of the municipality for the cost of remedying a health or safety hazard on the property.

(b) If notice under Subsection (a) is not provided, the notice required by Section 33.91 or 33.911 shall be given by the assessor or the collector for the municipality or county, as applicable, by:

(1) serving, in the manner provided by Rule 21a, Texas Rules of Civil Procedure, a true and correct copy of the application for a tax warrant filed under the Section 33.92 to each person known, or constructively known through reasonable inquiry, to own or have an interest in the property;

(2) publishing in the English language a notice of the assessor's intent to seize the property in a newspaper published in the county in which the property is located if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners; or

(3) if required under the Subsection (g), posting in the English language a notice of the assessor's intent to seize the property if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners,

(c) A notice under Subsection (b) (1) shall be provided at the time of filing the application for a tax warrant and must be supported by a certificate of service appearing on the application in the same manner and form as provided by Rule 21 a, Texas Rules of Civil Procedure. The notice is sufficient if sent to the person's last known address.

(d) A notice by publication or posting under Subsection (b) must substantially comply with this subsection. The notice must:

(1) be published or posted at least 10 days but not more than 180 days before the date the application for tax warrant under Section 33.92 is filed;

(2) be directed to the owners of the property by name, if known, or, if unknown, to "the unknown owners of the property described below";

(3) state that the assessor or collector intends to seize the property as abandoned property and that the property will be sold at public auction without further notice unless all delinquent taxes, penalties and interest are paid before the sale of the property; and

(4) describe the property.

(e) A description of the property under Subsection (d) (4) is sufficient if it is the same as the

property description appearing on the current tax roll for the county or municipality.

(f) A notice by publication or posting under Subsection (b) may relate to more than one property or to multiple owners of property.

(g) For publishing a notice under Subsection (b)(2), a newspaper may charge a rate that does not exceed the greater of two cents per word or an amount equal to the published word or line rate of that newspaper for the same class of advertising. If notice cannot be provided under Subsection (b)(1) and there is not a newspaper published in the county where the property is located, or a newspaper that will publish the notice for the rate authorized by this subsection, the assessor shall post the notice in writing in three public places in the county. One of the posted notices must be at the door of the county courthouse. Proof of the posting shall be made by affidavit of the person posting the notice or by the attorney for the assessor or collector.

(h) A person is considered to have been provided the notice under Section 33.91 or 33.911 in the manner provided by Subsection (b) if the application for the tax warrant under Section 33.92:

(1) contains the certificated of service as required by Subsection (b)(1);

(2) is accompanied by an affidavit on behalf of the applicable assessor or collector stating the fact of publication under Subsection (b)(2), with a copy of the published notice attached; or

(3) is accompanied by an affidavit of posting on behalf of the applicable assessor or collector under Subsection (g) stating the fact of posting and facts supporting the necessity of posting.

(i) A failure to provide, give, or receive a notice provided under this section does not affect the validity of a sale of the seized property or title to the property.

(j) The costs of publishing notice under this section are chargeable as costs and payable from the proceeds of the sale of the property.

33.92 - Institution of Seizure

(a) After property becomes subject to seizure under Section 33.91 or 33.911, the collector for a municipality or a county, as appropriate, may apply for a tax warrant to a district court in the county in which the property is located.

(b) - - -

(c) - - -

(d) - - -

33.93 - Tax Warrant

(a) A tax warrant shall direct the sheriff or a constable in the county and the collector for the municipality or the county to seize the property described in the warrant, subject to the right of redemption, for the payment of the ad valorem taxes, penalties, and interest owing on the property included in the application, any attorney fees included in the application as provided by Section 33.92(d), the amount secured by a municipal health or safety lien on the property included in the application, and the costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to a person executing the warrant the name and

address if known of any other person having an interest in the property.

(b) A bond may not be required of a municipality or county for issuance or delivery of a tax warrant, and a fee or court cost may not be charged for issuance or delivery of the warrant.

(c) On issuance of a tax warrant, the collector shall take possession of the property pending its sale by the officer charged with selling the property.

33.94 - Notice of Tax Sale

(By municipality or county not the sheriff or constable. The date, time and place will also be in the Notice)

TAX SALES

34.01 - Sale of Property

(a) Real property seized under a tax warrant issued under Subchapter E, Chapter 33, or ordered sold pursuant to foreclosure of a tax lien shall be sold by the officer charged with selling the property, unless otherwise directed by the taxing unit that requested the warrant or order of sale or by an authorized agent or attorney for that unit, the sale shall be conducted in the manner similar property is sold under execution except as otherwise provided by the subtitle.

(b) On receipt of an order of sale of real property, the officer charged with selling the property shall endorse on the order the date and exact time when the officer received the order. The endorsement is a levy on the property without necessity for going upon the ground. The officer shall calculate the total amount due under the judgment, including all taxes, penalties, and interest, plus any other amount awarded by the judgment, court costs and the costs of the sale. The costs of a sale include the costs of advertising, and deed recording fees anticipated to be paid in connection with the sale of the property. To assist the officer in making the calculation, the collector of any taxing unit that is party to the judgment may provide the officer with a certified tax statement showing the amount of the taxes included in the judgment that remain due that taxing unit and all penalties, interest, and attorney fees provided by the judgment as of the date of the proposed sale. If a certified tax statement is provided to the officer, the officer shall rely on the amount included in the statement and is not responsible or liable for the accuracy of the applicable portion of the calculation. A certified tax statement is not required to be sworn to and is sufficient if the tax collector or the collector's deputy signs the statement.

(c) The officer charged with the sale shall give written notice of the sale in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure, as amended, or that rule's successor to each person who was a defendant to the judgment or that person's attorney.

(d) An officer's failure to send the written notice of sale or a defendant's failure to receive that notice is insufficient by itself to invalidate:

- (1) the sale of the property; or
- (2) the title conveyed by that sale.

(e) A notice of sale under Subsection (c) must substantially comply with this subsection. The notice must include:

- (1) a statement of the authority under which the sale is to be made;
- (2) the date, time, and location of the sale; and
- (3) a brief description of the property to be sold.

(f) A notice of sale is not required to include field notes describing the property. A description of the property is sufficient if the notice:

- (1) states the number of acres and identifies the original survey;**
- (2) as to property located in a platted subdivision or addition, regardless of whether the subdivision or addition is recorded, states the name by which the land is generally known with reference to that subdivision or addition; or**
- (3) by reference adopts the description of the property contained in the**

judgment.

(g) For publishing a notice of sale, a newspaper may charge a rate that does not exceed the greater of:

- (1) two cents per word; or**
- (2) an amount equal to the published word or line rate of that newspaper for the same class of advertising.**

(h) If there is not a newspaper published in the county of the sale, or a newspaper that will publish the notice of sale for the rate authorized by Subsection (g), the officer shall post the notice in writing in three public places in the county not later than the 20th day before the date of the sale. One of the notices must be posted at the door of the county courthouse.

(i) The owner of real property subject to sale may file with the officer charged with the sale a written request that the property be divided and that only as many portions be sold as necessary to pay the amount due against the property, as calculated under Subsection (b). In the request the owner shall describe the desired portions and shall specify the order in which the portions should be sold. The owner may not specify more than four portions or a portion that divides a building or another contiguous improvement. That request must be delivered to the officer not later than the seventh day before the date of the sale.

(j) If a bid sufficient to pay the lesser or the amount calculated under Subsection (b) or the adjudged value is not received, the taxing unit that requested the order of sale may terminate the sale. If the taxing unit does not terminate the sale, the officer making the sale shall bid the property off to the taxing unit that requested the order of sale, unless otherwise agreed by each other taxing unit that is a party to the judgment, for the aggregate amount of the judgment against the property or for the market value of the property as specified in the judgment, whichever is less. The duty of the officer conducting the sale to bid off the property to a taxing unit under this subsection is self-executing. The actual attendance of a representative of the taxing unit at the sale is not a prerequisite to that duty.

(k) The taxing unit to which the property is bid off takes title to the property for the use and benefit of itself and all other taxing units that established tax liens in the suit. The taxing unit's title includes all the interest owned by the defendant, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption. Payments in satisfaction of the judgment and any costs or expenses of the sale may not be required of the purchasing taxing unit until the property is redeemed or resold by the purchasing taxing unit.

(l) Notwithstanding that property is bid off to a taxing unit under this section, a taxing unit that established a tax lien in the suit may continue to enforce collection on any amount for which a former owner of the property is liable to the taxing unit, including any post-judgment taxes, penalties, and interest, in any other manner provided by law.

(m) The officer making the sale shall prepare a deed to the purchaser of real

property at the sale, to any other person whom the purchaser may specify, or to the taxing unit to which the property was bid off. The taxing unit that requested the order of sale may elect to prepare a deed for execution by the officer, if the taxing unit prepares the deed, the officer shall execute that deed. An officer who executes a deed prepared by the taxing unit is not responsible or liable for any inconsistency, error, or other defect in the form of the deed. As soon as practicable after a deed is executed by the officer, the officer shall either file the deed for recording with the county clerk or deliver the executed deed to the taxing unit that requested the order of sale, which shall file the deed for recording with the county clerk. The county clerk shall file and record each deed filed under this subsection and after recording shall return the deed to the grantee.

(n) The deed vests good and perfect title in the purchaser or the purchaser's assigns to the interest owned by the defendant in the property subject to the foreclosure, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption, the terms of a recorded restrictive covenant running with the land that was recorded before January 1 of the year in which the tax lien on the property arose, a recorded lien that arose under that restrictive covenant that was not extinguished in the judgment foreclosing the tax lien, and each valid easement of record as of the date of the sale that was recorded before January 1 of the year the tax lien arose. The deed may be impeached only for fraud.

(o) If a bid sufficient to pay the amount specified by Subsection (p) is not received, the officer making the sale, with the consent of the collector who applied for the tax warrant, may offer property seized under Subchapter E, Chapter 33, to a person described by Section 11.181 or 11.20 for less than that amount. If the property is offered to a person described by Section 11.181 or 11.20, the officer making the sale shall reopen the bidding at the amount of that person's bid and bid off the property to the highest bidder. Consent to the sale by the taxing units entitled to receive proceeds of the sale is not required. The acceptance of a bid by the officer under this subsection is conclusive and binding on the question of its sufficiency. An action to set aside the sale on the grounds that a bid is insufficient may not be sustained, except that a taxing unit that participates in distribution of proceeds of the sale may file an action before the first anniversary of the date of the sale to set aside the sale on the grounds of fraud or collusion between the officer making the sale and the purchaser.

(p) Except as provided by Subsection (o), property seized under Subchapter E, Chapter 33, may not be sold for an amount that is less than the lesser of the market value of the property as specified in the warrant or the total amount of taxes, penalties, interest, costs, and other claims for which the warrant was issued. If a sufficient bid is not received by the officer making the sale, the officer shall bid off the property to a taxing unit in the manner specified by Subsection (j) and subject to the other provisions of that subsection. A taxing unit that takes title to property under this subsection takes title for the use and benefit of that taxing unit and all other taxing units that established tax liens in the suit or that, on the date of the seizure, were owed delinquent taxes on the property.

- (q) A sale of property under this section to a purchaser other than a taxing unit:
- (1) extinguishes each lien securing payment of the delinquent taxes, penalties, and interest against that property and included in the judgment; and
 - (2) does not affect the personal liability of any person for those taxes, penalties, and interest included in the judgment that are not satisfied from the proceeds of the sale

(r) Except as provided by this subsection, a sale of real property under this section

must take place at the county courthouse in the county in which the land is located. The commissioners court of the county may designate an area in the county courthouse or another location in the county where sales under this section must take place and shall record any designated area or other location in the real property records of the county. If the commissioners court designates an area in the courthouse or another location in the county for sales, a sale must occur in that area or at that location. If the commissioners court does not designate an area in the courthouse or another location in the county for sales, a sale must occur in the same area in the courthouse that is designated by the commissioners court for the sale of real property under Section 51.002, Property Code.

(s) To the extent of a conflict between this section and a provision of the Texas Rules of Civil Procedure that relates to an execution, this section controls.

34.015 - Persons Eligible to Purchase Real Property

(a) In this section, “person” does not include a taxing unit or an individual acting on behalf of a taxing unit.

(b) An officer conducting a sale of real property under Section 34.01 may not execute a deed in the name of or deliver a deed to any person other than the person who was the successful bidder. The officer may not execute or deliver a deed to the purchaser of the property unless the purchaser exhibits to the officer an unexpired written statement issued under this section to the person by the county assessor-collector of the county in which the sale is conducted showing that:

(1) there are no delinquent taxers owed by the person to that county; and
(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person in that school district or municipality.

(c) On the written request of any person, a county assessor-collector shall issue a written statement stating whether there are any delinquent taxes owed by the person to that county or to a school district or municipality having territory in that county. A request for the issuance of a statement by the county assessor-collector under this subsection must:

(1) sufficiently identify any property subject to taxation by the county or by a school district or municipality having territory in the county, regardless of whether the property is located in the county, that the person owns or formerly owned so that the county assessor-collector and the collector for each school district or municipality having territory in the county may determine whether the property is included on a current or a cumulative delinquent tax roll for the county, the school district, or the municipality under Section 33.03;

(2) specify the address to which the county assessor-collector should send the statement;

(3) include any additional information reasonably required by the county assessor-collector; and

(4) be sworn to and signed by the person requesting the statement.

(d) On receipt of a request under Subsection (c), the county assessor-collector shall send to the collector for each school district and municipality having territory in the county, other than a school district or municipality for which the county assessor-collector, a request for information as to whether there are any delinquent taxes owed by the person

to that school district or municipality. The county assessor-collector shall specify the date by which the collector must respond to the request.

(e) If the county assessor-collector determines that there are delinquent taxes owed to the county, the county assessor-collector shall include in the statement issued under Section (c) the amount of delinquent taxes owed by the person to that county. If the county assessor-collector is the collector for a school district or municipality having territory in the county and the county assessor-collector determines that there are delinquent ad valorem taxes owed by the person to the school district or municipality, the assessor-collector shall include in the statement issued under Subsection (c) that amount of delinquent taxes owed by the person to that school district or municipality.

(f) If the county assessor-collector receives a response from the collector for a school district or municipality having territory in the county indicating that there are delinquent taxes owed to that school district or municipality on the person's current or former property for which the person is personally liable, the county assessor-collector shall include in the statement issued under Subsection (c):

- (1) the amount of delinquent taxes owed by the person to that school district or municipality and
- (2) the name and address of the collector for that school district or

municipality.

(g) If the county assessor-collector determines that there are no delinquent taxes owed by the person to the county or to a school district or municipality for which the county assessor-collector is the collector, the county assessor-collector shall indicate in the statement issued under Subsection (c) that there are no delinquent ad valorem taxes owed by the person to the county or to the school district or municipality.

(h) If the county assessor-collector receives a response from the collector for any school district or municipality having territory in that county indicating that there no delinquent ad valorem taxes owed by the person to that school district or municipality, the county assessor-collector shall indicate in the statement under Subsection (c) that there are no delinquent ad valorem taxes owed by the person to that school district or municipality.

(i) If the county assessor-collector does not receive a response from the collector for any school district or municipality to whom the county assessor-collector sent a request under Subsection (d) as to whether there are delinquent taxes on the person's current or former property owed by the person to that school district or municipality, the county assessor-collector shall indicate in the statement issued under Subsection (c) that there are no reported delinquent taxes owed by the person to that school district or municipality.

(j) To cover the costs associated with the issuance of statements under Subsection (c), a county assessor-collector may charge the person requesting a statement a fee not to exceed \$10 for each statement requested.

(k) A statement under Subsection (c) must be issued in the name of the requestor, bear the requestor's name, include the dates of issuance and expiration, and be eligible for recording under Section 12.001(b), Property Code. A statement expires on the 90th day after the date of issuance.

(k-1) If within six months of the date of a sale of real property under Section 34.01, the successful bidder does not exhibit to the officer who conducted the sale an unexpired statement that complies with Subsection (k), the officer who conducted the sale shall provide a copy of the officer's return to the county assessor-collector for each county in which the real property is located. On receipt of the officer's return, the county assessor-collector shall file the copy with the county clerk of the county in which the county

assessor-collector serves. The county clerk shall record the return in records kept for that purpose and shall index and cross-index the return in the name of the successful bidder at the auction and each former owner of the property. The chief appraiser of each appraisal district that appraises the real property for taxation may list the successful bidder in the appraisal records of the district as the owner of the property.

(l) The deed executed by the officer conducting the sale must name the successful bidder as the grantee and recite that the successful bidder exhibited to that officer an unexpired written statement issued to the person in the manner prescribed by this section, showing that the county assessor-collector of the county in which the sale was conducted determined that:

(1) there are no delinquent ad valorem taxes owed by the person to that county; and

(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(m) If a deed contains the recital required by Subsection (l), it is conclusively presumed that this section was complied with.

(n) A person who knowingly violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

(o) To the extent of a conflict between this section and any other law, this section controls.

(p) This section applies only to a sale of real property under Section 34.01 that is conducted in:

(1) a county with a population of 250,000 or more; or

(2) a county with a population of less than 250,000 in which the commissioners court by order has adopted the provisions of this section.

34.02 - Distribution of Proceeds

(a) The proceeds of a tax sale under Section 33.94 or 34.01 shall be applied in the order prescribed by Subsection (b). The amount included under each subdivision of Subsection (b) must be fully paid before any of the proceeds may be applied to the amount included under a subsequent subdivision.

(b) The proceeds shall be applied to:

(1) the costs of advertising the tax sale;

(2) any fees ordered by the judgment to be paid to an appointed attorney ad litem;

(3) the original court costs payable to the clerk of the court;

(4) the fees and commissions payable to the officer conducting the sale;

(5) the expenses incurred by a taxing unit in determining necessary parties and in procuring necessary legal descriptions of the property if those expenses were awarded to the taxing unit by the judgment under section 33.48(a)(4);

(6) the taxes, penalties, interest, and attorney's fees that are due under the judgment, and

(7) any other amount awarded to a taxing unit under the judgment.

(c) If the proceeds are not sufficient to pay the total amount included under any subdivision of Subsection (b), each participant in the amount included under that subdivision is entitled a share of the proceeds in amount equal to the proportion its entitlement bears to

the total amount included under that subdivision.

(d) The officer conducting a sale under Section 33.94 or 34.01 shall pay any excess proceeds after payment of all amounts due all participants in the sale as specified by Subsection (b) to the clerk of the court issuing the warrant or order of sale.

(e) In this section, "taxes" includes a charge, fee, or expense that is expressly authorized by Section 32.06 or 32.065.

34.05 - Resale by Taxing Unit

(a) If property is sold to a taxing unit that is a party to the judgment, the taxing unit may sell the property at any time by public or private sale. In selling the property, the taxing unit may, but is not required to, use the procedures provided by Section 263.001, Local Government Code, or Section 272.001, Local Government Code. The sale is subject to any right of redemption of the former owner. The redemption period begins on the date the deed to the taxing unit is filed for record.

(b) Property sold pursuant to Subsections (c) and (d) of this section may be sold for any amount. This subsection does not authorize a sale of property in violation Section 52, Article III, Texas Constitution.

(c) The taxing unit purchasing the property by resolution of its governing body may request the sheriff or constable to sell the property at a public sale. If the purchasing taxing unit has not sold the property within six months after the date on which the owner's right of redemption terminates, any taxing unit that is entitled to receive proceeds of the sale by resolution of its governing body may request the sheriff or a constable in writing to sell the property at a public sale. On receipt of a request made under this subsection, the sheriff or constable shall sell the property as provided by subsection (d), unless the property is sold under Subsection (h) or (i) before the date set for the public sale.

(d) Except as provided by this subsection, all public sales requested as provided by Subsection (c) shall be conducted in the manner prescribed by the Texas Rules of Civil Procedure for the sale of property under execution. The notice of the sale must contain a description of the property to be sold, the number and style of the suit under which the property was sold at the tax foreclosure sale, and the date of the tax foreclosure sale. The description of the property in the notice is sufficient if it is stated in the manner provided by Section 34.01(f). If the commissioners court of a county by order specifies the date or time at which or location in the county where a public sale requested under Subsection (c) shall be conducted, the sale shall be conducted on the date and at the time and location specified in the order. The acceptance of a bid by the officer conducting the sale is conclusive and binding on the question of its sufficiency. An action to set aside the sale on the grounds that the bid is insufficient may not be sustained in court, except that a taxing unit that participates in distribution of proceeds of the sale may file an action before the first anniversary of the date of the sale to set aside the sale on the grounds of fraud or collusion between the officer making the sale and the purchaser. On conclusion of the sale, the officer making the sales shall prepare a deed to the purchaser. The taxing unit that requested the sale may elect to prepare a deed for execution by the officer. If the taxing unit prepares the deed, the officer shall execute that deed. An officer who executes a deed prepared by the taxing unit is not responsible or liable for any inconsistency, error, or other defect in the form of the deed. As soon as practicable after a deed is executed by the officer, the officer shall either file the deed for recording with the county clerk or deliver the executed deed to the taxing unit that requested the sale, which shall file the deed for

recording with the county clerk. The county clerk shall file and record each deed under this subsection and after recording shall return the deed to the grantee.

(e) The presiding officer of a taxing unit selling real property under Subsection (h) and (i), under Section 34.051, or under Section 253.010, Local Government Code, or the sheriff or constable selling real property under Subsection (c) and (d) shall execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property. The conveyance shall be made subject to any remaining right of redemption at the time of the sale.

(f) - - - -

(g) - - - -

(h) In lieu of a sale pursuant to the Subsection (c) and (d) of this section, the taxing unit that purchased the property may sell the property at a private sale. Consent of each taxing unit entitled to receive proceeds of the sale under the judgment is not required. Property sold under this subsection may not be sold for amount that is less than the lesser of:

- (1) the market value specified in the judgment of foreclosure; or
- (2) the total amount of the judgments against the property.

(i) In lieu of a sale pursuant to Subsection (c) and (d) of this section, the taxing unit that purchased the property may sell the property at a private sale for an amount less than required under Subsection (h) of this section with the consent of each taxing unit entitled to receive proceeds of the sale under the judgment. This subsection does not authorize a sale of property in violation of Section 52, Article III, Texas Constitution

34.06 - Distribution of Proceeds of Resale

(a) The proceeds of a resale of property purchased by a taxing unit at a tax foreclosure sale shall be paid to the purchasing taxing unit.

(b) The proceeds of the resale shall be distributed as required by Subsections (c)-(e).

(c) The purchasing taxing unit shall first retain an amount from the proceeds to reimburse the unit for reasonable costs, as defined by Section 34.21, incurred by the unit for:

- (1) maintaining, preserving, and safekeeping the property;
- (2) marketing the property for resale; and
- (3) costs described by Subsection (f).

(d) - - - -

(e) - - - -

(f) - - - -

CHAPTER 13

FORMS

There is provided sample forms, from the Honorable Tom Lawrence, Justice of the Peace, Precinct 4, place Two, Harris County, Texas, and the Texas Justice Training Center Desk Book, used in Civil Process, that are used in Justice Court. This information is provided so you may become familiar with these papers.

You can also get copies of Civil Process Citation and Writs from the District and County Clerk.

The following “Sample” forms are provided to you as follows:

1. Citation (p. 122)
2. Writ of Execution on Judgment for Money (p. 123)
3. Writ of Attachment (p. 124)
4. Writ of Possession (p. 125)
5. Writ of Garnishment (p. 126)
6. Tenants Writ of Reentry (p. 127)
7. Writ of Sequestration (p. 128)
8. Citation to Defendant in Small Claims Court (p. 129)
9. Writ of citation - Forcible Detainer (p. 130)
10. Writ of citation - Small Claims Court (p. 131)

CHAPTER 14

ATTORNEY GENERAL OPINIONS

- | | |
|----------------|--|
| GA-0140 | Execution of tax warrants and property seizure and sale under Chapter 33, Tax Code. (p. 132) |
| JM-1046 | Commissioners courts may set reasonable fees for services performed by sheriff and constables in unsuccessful attempts to serve civil process. (p. 142) |

CHAPTER 15

CORPORATION

ART. 2.11 - Service of Process on Corporation

- A. The president and all vice presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.
- B. Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with the Deputy Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is service on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.
- C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.
- D. Service of process, notice, or demand required or permitted by law to be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection of a delinquent ad valorem tax may be served on a corporation whose corporate privileges are forfeited under Section 171.251, Tax Code, or is involuntarily dissolved under Article 7.01 of this Act by delivering the process, notice, or demand to any officer or director of the corporation, as listed in the most recent records of the secretary of state. If the officers or directors of the corporation are unknown or cannot be found, service on the corporation may be made in the same manner as service in made on unknown shareholders under law. Notwithstanding any disability or reinstatement of a corporation, service of process under this section is sufficient for a judgment against the corporation or a judgment in rem against any property to which the corporation holds title.

