

# **Post-Judgment Civil Procedure**

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## **Agenda**

- Extending Judgments and Reviving Dormant Judgments
- Post Judgment Discovery
- Enforcement of Judgments
  - Abstract of Judgment
  - Writ of Execution
  - Writ of Garnishment
- Payment of Judgment When Plaintiff Can't be Found or Refuses to Release a Judgment
- Online Resources

## Abbreviations / Vocab

- TRCP = Texas Rules of Civil Procedure
- CPRC = Civil Practice and Remedies Code
- Judgment Debtor = the person who owes money under a judgment, also the defendant
- Judgment Creditor = the person who is owed money under a judgment

## Extending Judgments and Reviving Dormant Judgments

## Extending Judgments

- Judgment becomes dormant if no writ of execution issued within 10 years after judgment
  - Can extend judgment by getting a writ of execution at any point within 10 years from judgment or previous writ issued
  - Clock starts over after each writ issued – could keep judgment alive indefinitely by having a new writ issued every 10 years
- Execution may not be issued if judgment is dormant and has not been revived

CPRC 34.001; *Cadle Co. v. Fahoum*, No. 2-06-459-CV, 2008 WL 754992, at \*2 (Tex.App.-Fort Worth Mar.20, 2008, no pet.) (mem.op.)

## Reviving Judgments – Writ of Scire Facias

- Revives a judgment for another 10 years
- Must be brought not later than 2 years after the date the judgment becomes dormant
- Note:
  - Filing a debt action in same timeframe also revives
  - An abstract of judgment (more info on this later) DOES NOT revive

CPRC 31.006

## Reviving Judgments – Writ of Scire Facias

- Not discretionary
- Court should only look at the date of when judgment became dormant and date of motion for to revive the judgment scire facias
- Must grant if the motion for the writ is filed within the 2 year deadline

*Cadle Co. v. Rollins, 2010 WL 670561, at \*2 (Tex. App.– Houston [1st Dist.] Feb. 25, 2010, no pet.)*

Joe got a judgment in 1995. A writ of execution was issued in 2002. An abstract of judgment was issued in 2006. When did the judgment become dormant?

- A. 2005
- B. 2012
- C. 2014
- D. 2016

# Post-Judgment Discovery

## Purpose and Timing

- Parties may conduct post-judgment discovery to find information to aid in enforcement
- At any time after judgment as long no appeal has been perfected and judgment is not dormant

TRCP 621a

## Procedures

- Not required to be filed with the court
- The party requesting discovery must give the responding party at least 30 days to respond to a request.
- The responding party may file a written objection with the court within 30 days of receiving the request.
- If an objection is filed, the judge must hold a hearing to determine if the request is valid.
  - If the objection is denied, the judge must order the party to respond to the request.
  - If the objection is upheld, the judge may reform the request or dismiss it entirely.

TRCP 500.9

## Enforcement of Judgments

## Enforceable in Same Way as County or District Court

- “Justice Court Judgments are enforceable in the same method as in county and district court, except as provided by law.”

TRCP 505.2

## Effect of Appeals

- Properly perfected appeal sets aside and nullifies justice court judgment – and options for enforcement along with it
- Even if the case is ultimately dismissed, justice court cannot issue any writ/order on the nullified judgment
  - Unless dismissed because appeal not perfected/county court didn't obtain jurisdiction

*Knight v. Texas Dept. of Public Safety, 361 S.W.2d 620, 623 (Tex. Civ. App. – Amarillo 1962, no writ); Campbell v. Knox, 52 S.W.2d 803, 806 (Tex. Civ. App. – Eastland 1932, writ dism'd)*

## Issuance of Writs

- Every writ from a justice court must:
  - Be in writing
  - Be issued and officially signed by the judge
  - Be styled “The State of Texas”
  - Be directed to the person or party upon whom it is to be served
  - Be made returnable to the court
  - Note the date of issuance
- Fees
  - \$5.00 per page
  - Any service fees for constable/sheriff

TRCP 507.4; Local Government Code 118.121(2)(C)

## Abstract of Judgment



## What Does It Do?

- Creates a lien on non-exempt real property of defendant based on a final judgment (judgment itself does not create a lien)
  - Must be properly filed and indexed in the county where the property they want a lien on is located
- Does NOT revive judgment
  - Ceases to exist if a judgment becomes dormant
  - Expires after 10 years – not extended with judgment – must renew

Property Code 52.001, 52.006; *C.I.T. Corp. v. Haynie*, 135 S.W.2d 618, 622 (Tex. Civ. App.– Eastland 1940)

## Who Prepares and When?

- On application, judge or clerk of court that rendered judgment shall prepare, certify, and deliver to applicant
  - No hearing needed
  - ALL that the JP court does regarding abstracts
- Attorney can also prepare and certify w/o court

Property Code 52.002

## What Should Be Included?

- Must Include:
  - Names of plaintiff and defendant
  - Defendant's birth date if known
  - Defendant's address or nature, date, and place of service of citation
  - Last three numbers of Defendant's driver's license and SSN, if available
  - Number of suit, date and amount of judgment and amount of balance due
  - Rate of interest specified in judgment

Property Code 52.003

## Writ of Execution

## Writ of Execution – What?

- Order to Sheriff or Constable
- Levy on defendant's nonexempt property
  - For list of exempt property – see Property Code Chapters 41 & 42 (examples: homestead, current wages, trade tools, 1 vehicle per family member, pets, etc.)
- Proceeds go to plaintiff toward satisfaction of the judgment

TRCP 629, 637

## Writ of Execution – When?

- **MUST** be issued – if 30 days have passed since final judgment signed or motion for new trial overruled
  - on application by plaintiff
  - No limit on how many or how long after, as long as judgment is not dormant
- **MAY** be issued- less than 30 days
  - If plaintiff files affidavit that defendant is about to remove or transfer personal property out of the county or defraud creditors
- No hearing needed

TRCP 627, 628

## Writ of Execution – Contents

- Directed to any sheriff or constable within the State of Texas and signed by the judge
- Requires the officer to execute it and collect costs adjudged against defendant and the costs of execution
- Describes the judgment: the court, the date rendered, the names of the parties
- Copy of the bill of costs attached
- Must require the officer to return the writ in 30, 60, or 90 days, as directed by the plaintiff or plaintiff's attorney

TRCP 621, 629

## Writ of Execution – Contents (Money Judgment)

- Writ must specify:
  - Sum recovered or directed to be paid
  - Sum actually due when writ is issued
  - Rate of interest upon the sum due (Info on interest rates – Section 304, Finance Code)
  - Must require officer to satisfy the judgment and costs out of the property of the judgment debtor

TRCP 630

## Writ of Execution – Contents (Particular Property)

- Must particularly describe the property
  - may be real estate/property or personal property
- Execution for SALE of particular property
- Execution for DELIVERY of certain property
  - Must designate party awarded possession and require officer to deliver possession of the property to that person
- Execution for possession or value of personal property
  - Writ shall command officer to conduct regular execution for amount of value if cannot get specific personal property

TRCP 631, 632, 633

## Writ of Execution – Executing

- Officer must endorse the writ with the hour and day received
- Must proceed without delay to levy upon the non-exempt property of the defendant found in his county
- Levy must first be made upon property pointed out by defendant (can't be exempt or have been sold to others)
- Property must be sold before the 30, 60, or 90 day deadline
- If property seized but not sold before the deadline – court may issue a writ authorizing the officer to dispose of property that has already been seized (*this is called a writ of venditioni exponas*).
  - *Borden v. McRae, 46 Tex. 396, 1877 WL 8543 (1877)*

TRCP 621, 636, 637, 638

## Writ of Execution – Executing

- Real Estate / Real Property
  - Not necessary to go on land; just endorse the levy on the writ
  - Sold at public auction at courthouse door of the county
- Personal Property
  - Levy made when officer takes possession
  - Offered for sale at place where it was seized, at courthouse door, or at a place where convenient to show to purchasers

TRCP 639, 646a, 649, 650

## Writ of Execution – Return of Writ

- Officer must make a signed written return
- Must state what the officer did in carrying out the writ
- Must be filed with judge

TRCP 654

## Writ of Execution – Replevy Bond

- Any personal property taken in execution may be returned to the defendant upon delivery to officer of a “replevy bond,” payable to the plaintiff
  - 2 or more good and sufficient sureties approved by officer
  - Conditions: property or payment of value of property (stated in bond) shall be delivered to the officer at set time and place
- Where property has been replevied, defendant may sell or dispose of the property and pay the officer the stipulated value

TRCP 644, 655

## Writ of Execution – Stay of Execution

- Within 10 days after judgment, for a period of 3 months
- Defendant must file affidavit stating:
  - No money to pay the judgment
  - Enforcement prior to 3 months would cause hardship and sacrifice of property which would not likely be caused if stayed (*EX: waiting on crops to be harvested, tax return*)
- Defendant must acknowledge he is bound for full amount of judgment with interest and costs
  - Acknowledgment must be entered on docket and signed by approved sureties
  - Shall constitute judgment upon which execution shall issue if not paid before deadline

TRCP 635

## Writ of Execution – Court Docket

- The judge must enter in the docket:
  - Date issued
  - To whom directed and delivered
  - Amount of debt, damages, and costs
  - Date of return
  - Manner in which it was executed

TRCP 507.3(a)(10)

## Writ of Execution – Execution Docket

- The clerk of each court shall keep an execution docket in which he shall enter a statement of all executions as they are issued by him, specifying:
  - Names of the parties
  - Amount of judgment
  - Amount due thereon
  - Rate of interest when it exceeds six percent
  - Court costs
  - Date of issuance
  - To whom delivered
  - Return of the officer and date of return

TRCP 656



## Writ of Execution – Execution Docket

- Such docket entries shall be taken and deemed to be a record
- The clerk shall keep an index and cross-index to the execution docket
- When execution is in favor or against several persons, it shall be indexed in the name of each person.

TRCP 656

## Writ of Garnishment

## Writ of Garnishment – What?

- If a plaintiff wants to satisfy their judgment by getting money/items belonging to the defendant that are held by a 3<sup>rd</sup> party
- 3<sup>rd</sup> party = garnishee (usually a bank, but doesn't have to be)
- May issue several at same time, or in succession, to be sent to different counties

TRCP 657, 658

## Writ of Garnishment – Pre-Judgment

- If a Writ of Attachment has been issued; OR
- If plaintiff has sued for a debt and makes affidavit stating:
  - debt is just, due, and unpaid;
  - defendant does not possess property in TX subject to execution sufficient to satisfy the debt; AND
  - the garnishment is not sought to injure the defendant or the garnishee
- Must be supported by affidavit and have hearing, may be ex parte
- Must first file bond with surety payable to defendant for if case is not prosecuted or writ is wrongfully issued
- CPRC 63.001; TRCP 658, 658a

## Writ of Garnishment – Post-Judgment

- Plaintiff has a valid, subsisting final judgment
  - Judgment cannot be dormant
- Makes affidavit stating:
  - within plaintiff's knowledge, defendant does not possess property in TX subject to execution sufficient to satisfy the judgment

CPRC 63.001; TRCP 657

## Writ of Garnishment – What Can Be Garnished?

- Amount of judgment, interest, and costs from main case and garnishment proceedings
  - May garnish either money or items that can be turned over to an officer for sale
- Can be levied only against personal property, not real property
- Current wages for personal service are not subject to garnishment (exception: enforcement of court-ordered child support or spousal maintenance)

TRCP 668, 669; CPRC 63.004; *Tex. Const. art. XVI, § 28; Fitzgerald v. Brown, Smith & Marsh Bros., 283 S.W. 576, 578 (Tex. Civ. App. – Texarkana 1926, writ dismissed)*

## Writ of Garnishment – Docket / Fee

- Case is docketed by judge separately and handled as a separate proceeding against garnishee
- In name of plaintiff and garnishee as defendant
- Civil filing fee in addition to writ fee?
  - No guidance from statute.
  - TJCTC position: Up to the judge, but be consistent.

TRCP 659

## Writ of Garnishment – Execution

- Only sheriff or constable – no private process
  - Officer who issues writ may also deliver to plaintiff or his agent or attorney to give to sheriff/constable
- Sheriff or constable shall immediately proceed to execute writ by delivering a copy to the garnishee
- Return – as with other citations
- Service on defendant

TRCP 662, 663; *Moody Nat'l Bank v. Riebschlager*, 946 S.W.2d 521 (Tex.App.-Houston [14<sup>th</sup> Dist.] 1997, writ denied)

## Writ of Garnishment – Service on Defendant

- As would a citation or any manner allowed by Rule 21a
- Copy of writ, application, accompanying affidavits and court orders
- As soon as practicable following service of the writ
- Must contain notification to defendant – specific required language in statute
  - Right to file replevy bond
  - Right to file a motion to dissolve writ

TRCP 663a

## Writ of Garnishment – Defendant's Rights

- Right to replevy (get back) property or proceeds of property sale by posting a bond with surety payable to plaintiff
- May file a motion to substitute property
- May move to dissolve or modify writ
  - Ruling on motion must be made within 10 days
  - Stays further proceedings except regarding perishable goods
  - Dissolves or modifies replevy bond accordingly

TRCP 664, 664a

## Writ of Garnishment – Garnishee Obligations

- Writ is issued directing garnishee to answer by 10am on first Monday after 10 days
- Answer must be in writing, signed, and state under oath:
  - From time of service of writ, the amount he is or was indebted to defendant and what effects of defendant he has or had in his possession
  - What other persons within his knowledge are indebted to defendant or have effects belonging to defendant in their possession
- After service of writ, garnishee may not deliver any effects or pay any debt to the defendant

TRCP 659, 665; CPRC 63.003

## Writ of Garnishment – Outcome

- **If garnishee files answer which denies possession of property or indebtedness and answer is not controverted**
  - Court shall enter judgment discharging garnishee
- **If plaintiff or defendant controverts garnishee's answer**
  - Can be tried as in other cases (must take place in garnishee's county of residence)

TRCP 666, 673, 674, 675, 676

## Writ of Garnishment – Outcome

- **If garnishee does not file answer**
  - Court may render default judgment against garnishee “as in other civil cases” at any time after judgment rendered against defendant
- **If garnishee files answer that indicates or court finds indebtedness to or possession of property of defendant**
  - Court shall render judgment against garnishee
- If garnishee fails or refuses to pay or deliver effects, a writ of execution may issue as in any other case

TRCP 667, 668

**Payment of Judgment When  
Plaintiff Can't be Found or  
Refuses to Release a Judgment**

## Procedure for Payment of a Judgment When Judgment Creditor Is Missing

- Judgment debtor wants to pay and have judgment released, but can't find the judgment creditor
- Debtor must attempt to notify creditor by registered or certified mail at:
  - Creditor's last known address and address in pleadings/court record (if different)
  - Address of creditor's last attorney as shown in pleadings/court record and attorney's address from State Bar of Texas records (if different)
- If no response by 15<sup>th</sup> day, must file an affidavit with court
- CPRC 31.008

## Procedure for Payment of a Judgment When Plaintiff Is Missing

- Debtor must deposit the money in the clerk's trust fund account
  - Must be for the full judgment amount, without offsets or claims
  - Interest is calculated as of the date of payment into the account
- Debtor must prepare a recordable release of judgment to be executed by the judge or clerk on behalf of the creditor

CPRC 31.008



## What if Plaintiff Refuses Payment or Refuses to Execute a Release?

- Debtor still has to attempt to notify creditor by registered/certified mail and file an affidavit with the court if no response within 15 days (just like when creditor is missing)
- If creditor refuses to accept payment or accepts payment and refuses to execute a release, the court SHALL set a hearing on a party's motion or the court's own motion

CPRC 31.008(g)

## What if Plaintiff Refuses Payment or Refuses to Execute a Release?

- On notice and hearing, court may direct the judgment debtor to prepare and file a recordable release of the judgment with the clerk if the court finds that:
  - (1) the amount under the judgment has been paid into the registry of the court; or
  - (2) the judgment creditor has accepted payment under the judgment and refused to execute a release of judgment.

CPRC 31.008(g)

# Online Resources

## Online Resources

- Helpful information is just a click away on the resources section of the TJCTC website:
  - <http://www.tjctc.org/tjctc-resources.html>
- Many different forms/templates are also available:
  - <http://www.tjctc.org/tjctc-resources/forms.html>
- Sites where you can find the statutes and rules:
  - <http://www.statutes.legis.state.tx.us/Index.aspx>
  - <http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-912016.pdf>