

Turnover and Appointment of Receivers

Randall L. Sarosdy
General Counsel
Texas Justice Court Training Center

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Resources and Useful Materials

- Rules 500 – 508, Texas Rules of Civil Procedure
- Thea Whalen, “Turnover Orders and the Request to Appoint a Receiver,” Spring 2016 Newsletter: <http://gato-docs.its.txstate.edu/jcr:3563f204-ff53-4d2e-8a49-70cabe115b97/2016%20JUNE%20Newsletter.pdf>

Turnover Order

- Purpose is to aid a judgment creditor where the judgment debtor owns property that “cannot readily be attached or levied on by ordinary legal process.”
- The property must not be exempt from attachment, execution or seizure for the satisfaction of liabilities

-- C.P.R.C. § 31.002

But HB 1066 Amends The Turnover Statute

- Has passed both houses and been sent to the governor; not yet signed
- Amends the statute as follows:
“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.”

-- Section 31.002(a), Civil Practice and Remedies Code

HB 1066

- The change in law applies to the collection of any judgment, regardless of whether the judgment was entered before, on, or after the effective date of this Act.
- The Act is effective immediately.
 - This will be when the governor signs or on June 19, 2017, unless he vetoes.

Turnover Order

- So there must be an application and it should allege that the judgment creditor is seeking non-exempt property that the judgment creditor cannot otherwise reach
- Evidence needs to be presented to prove the judgment creditor is entitled to the order
- But an order can be granted ex parte and it is up to the court to decide whether or not it wants to hold a hearing

Turnover Order

- Can a turnover order be granted if the judgment creditor has made no attempt to levy by ordinary legal process?
- Some courts have required that a writ of execution be returned nulla bona first
- But one court has held a writ of execution is not a prerequisite
- TCJTC's position: It is within the court's discretion to require a writ of execution attempt first – until HB 1066 goes into effect

Turnover Order

- When can property “not readily be attached or levied upon?”
- Many cases have dealt with multiple prior attempts at execution and a judgment debtor who refused to appear at post-judgment discovery depositions
- Legislative history suggests this procedure is for property that is difficult to reach, such as contract rights, stocks and negotiable instruments

Appointment of a Receiver

- Who is the property turned over to? The court:
 - May order the judgment debtor to turn over the designated property to a sheriff or constable for execution;
 - May otherwise apply the property to the satisfaction of the judgment; or
 - May appoint a receiver with authority to take possession of nonexempt property, sell it and pay the proceeds to the judgment creditor as required to satisfy the judgment.

-- *Williams Farms Produce Sales, Inc. v. R & G Produce Co.*, 443 S.W.3d 250, 255 (Tex. App.—Corpus Christi 2014, no pet.)

Appointment of a Receiver

- Court cannot order the property turned over directly to the judgment creditor
- The order does not have to identify specific property

Appointment of a Receiver

- Appointment of a receiver is within the court's discretion
- Court may require receiver to be a resident of Texas and to take an oath to faithfully execute their duties
- May require a bond

Appointment of a Receiver

- Court has discretion concerning the duties of the receiver and may limit or expand the duties as the court sees fit
 - may limit the receiver's authority to take "cash on hand"
 - may require receiver to provide an inventory of all property taken

Appointment of a Receiver

- If you grant an order it must be definite, clear and precise so that the person to whom it is directed has sufficient information as to his duties and does not have to interpret it or draw inferences or conclusions

Appointment of a Receiver

- Costs may be included since the judgment creditor is entitled to recover reasonable costs, including attorney's fees
- But if a receiver is appointed any finding of reasonable fees should not be made until **after** the work is completed
- A reasonable fee cannot be determined in advance

Turnover Order and Receivers

Summary:

1. The application must include evidence that the property requested is nonexempt and cannot be readily attached or levied upon by ordinary legal process
2. Currently you may require the judgment creditor to attempt to collect the judgment first by means of a writ of execution; but once HB 1066 goes into effect you may not require this
3. You may but are not required to hold a hearing
4. An order needs to provide guidance as to the property to be turned over and state that it is nonexempt
5. Whether or not a receiver is appointed is within your discretion