

# Preparation and Conducting Execution/Order of Sale

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## After an Execution Levy

- Now you have property to sell...so what do you do?

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## Get Ready For The Sale

1. Prepare the Notice of Sale
2. Publish the Notice of Sale  
(real property only)
  1. Post the Notice of Sale
  2. Mail/Deliver Notice of Sale to  
all interested parties

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### Information Needed For Notice of Sale

- Style of Case: Plaintiff Vs. Defendant
- Cause Number
- List Court Issuing Execution or Order of Sale
- Property Description.
  - \* Real Property – Legal Description and  
“more commonly known as”  
address, if any
  - \* Personal Property – Any Identifiers –  
Brand/Manufacture Names,  
Year  
Manufactured, Serial Number, Model  
No., and a Detailed Description (Photos  
are helpful)
- Include Relevant Dates:
  - Date of Judgment    - Date Came to Hand    - Date  
Levied                    - Date of Issuance    - Date of  
Expiration    - Sale Date

## Preparing The Notice of Sale

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## NOTICE OF SALE REAL ESTATE

TRCP Rule 647

- The time & place of sale of real estate under execution, order of sale, or *venditioni exponas* shall be advertised by the officer by having the notice thereof published in the English language once a week for **3 consecutive weeks** preceding such sale, in some newspaper in said county.

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## NOTICE OF SALE REAL ESTATE

Texas Rules of Civil Procedure Rule 647

- The 1<sup>st</sup> of said publication shall appear no less than 20 days immediately preceding the day of the sale.
  - Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time & place of sale
- ...the notice shall also contain a brief description of the property to be sold, it shall give the number of acres, it shall state the original survey, locality in the county, AND **the name by which the land is most generally known.**

***IE: Legal description of the property***

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## What if there is no newspaper?

Texas Rules of Civil Procedure Rule 647

- If there be no newspaper published in the county, ... 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.

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## Preparing The Notice of Sale

### Additional Information to Include in Notice of Sale

- Date and Time of Sale –
  - Time: **Personal Property** – state the specific time the sale will begin
  - Time: **Real Property** – “Between the hours of 10:00 am and 4:00 pm”
- Location of Sale
  1. **Personal Property:** Give Specific Address Sale To Be Held
  2. **Real Property:** Specific Address to the Court House Door, or location the Commissioners Court has designated as the Court House Door.
- Terms: Cash, Cashiers Check, Money Order or Wire Transfer

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## Preparing The Notice of Sale

### Other Information to include in Notice of Sale

- Additional Terms, such as:
  - Firearms Sold Only To persons with FFL or LTC, or background check required as condition to sale.
  - Alcohol Sold Only To TABC Licensee's or Permittee's
  - Properties To Be Sold In Separate Lots, describe
  - Real Property To Be Sold Separately Until Judgment Satisfied.

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## Notice to Defendant

Texas Rules of Civil Procedure Rule 647

- 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.
- **Advise: mail regular and certified to the plaintiff and attorneys also**

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## Notice of Sale of Personal Property

Texas Rules of Civil Procedure Rule 650

Previous notice of the time and place of the sale of any personal property levied under execution shall be given by posting notice thereon for

- ✓ For ten 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.

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## Sale of Personal Property

Texas Rules of Civil Procedure Rule 649

**Personal property levied on under execution shall be offered for sale on the premises:**

- where it is taken in execution,
- or at the courthouse door of the county
- 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.

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## Sale of Personal Property

Texas Rules of Civil Procedure Rule 649 Continued

Personal property susceptible of being exhibited shall not be sold unless the same can be present and subject to the view of those attending the sale

**The exceptions being:**

1. Shares of stock in a joint stock or incorporated companies
2. 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.

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## Knowledge Check

In order to levy on real property is it necessary to go to the property to inspect it to determine usability?

1. Yes
2. No
3. Sometimes depending on circumstances

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## LEVY ON REAL ESTATE

Texas Rules of Civil Procedure Rule 639

- 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 for him to endorse such levy on the writ.

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## SALE OF REAL PROPERTY

Texas Rules of Civil Procedure Rule 646a

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 1<sup>st</sup> Tuesday of the month, between the hours of 10:00AM - 4:00PM

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## COURTHOUSE DOOR DEFINED

Texas Rules of Civil Procedure Rule 648

- 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.
- Or any other place designated by the Commissioners Court of said county

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## Sale Day-How to

- What do you do first?
- What about the bidders?
- How do you begin the sale?
- Where to start the bidding?
- What about storage costs? Fees?
- Do you give a warranty on the property?
- Who collects the monies?

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- Begin at the time publicized in notice of sale
- Have the “Bidders” sign in, providing the required tax letter and assign each a bidder number
  - Bidders shall present an unexpired written statement issued to the person in the manner prescribed by Section 34.015, Tax Code, showing that the Travis County Assessor-Collector has determined that there are no delinquent ad valorem taxes owed by the person. In addition, an individual may not bid on or purchase property in the name of any other individual.

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Minimum Bid –  
Should Not Be Less Than All costs of Suits

- Publisher Fee/Cost
- Any other advertising fees
- Attorney Ad Litem
- Court Costs
- Posting Fees
- Postage
- Deed or Bill of Sale Fee
- Any Additional Costs –
  - Moving/Storage Cost

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## Preparing The Notice of Sale

- Constable Commission – Commission Calculated on Judgment, and All Monies Collected, even
- Plaintiff or Constable can start bidding at a higher amount than “Minimum Bid” But Should Not Start Lower than Minimum Bid.
- Plaintiff may direct you to lower the amount several times if necessary, or they direct you to cancel the sale, but can they direct you to lower the bid for an amount less than the Calculated Minimum Bid?

**Yes**     example-levy on a trailer or vehicle which is valued less than the  
costs/minimum bid

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- **Read the notice of sale aloud for each property**
- **Notice of sale should include a disclaimer:**
  - **Notice to Bidders: You are buying whatever interest, if any, the Debtor has in the property. Purchase of the Debtors interest in the property may not extinguish any liens or security interests held by other persons. There are no warranties, express or implied, regarding the property being sold, including but not limited to warranties of title, merchantability or fitness for a particular purpose.**
- **Record each bid by assigned bidder number**
- **Selling price is to the highest bidder with cash in hand (or other accepted form of payment)**

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## Knowledge check

- Can the defendant stop the sale of their property after it has been levied and posted or published for sale?

1. Yes
2. No
3. Maybe?

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## Defendant remedies to stop the sale

- Bankruptcy
- Supersedes bond
- Temporary Restraining Order

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## Speed bumps along the way

- Run out of time to hold sale
  - Remedy: Venditioni Exponas
- Not posted or published properly
  - Improper sale liability

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## Venditioni Exponas

### Texas Law "definition"

- A Writ of Venditioni Exponas is used to extend the life of a writ of execution when the property has been seized and the writ under which it was seized will expire before the property can be sold. Regardless of the efforts of the officer and the plaintiff, sometimes real or personal property levied on cannot be sold before the writ expires, i.e. discovery of errors in publication, delay in seizure of property due to acts of the defendant.
  - While its only reference is in Rule 647 relating to Notices of Sale of Real Estate, the writ has been used per case law to extend the life of the writ of execution on personal property as well. Warnock v. Marin, 93 S.W.2d 793 (Tex. App. -El Paso, 1936, no writ).

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## Improper Sale

Civil Practice & Remedies Code Section 34.066

- 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.

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## Knowledge Check

- I have been looking for a house/car just like this...Can I buy it at the auction being held by my Constable's office?
  1. Yes
  2. No
  3. Maybe, if I ask my Constable first?

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## You as the officer may NOT Purchase Property!

Civil Practice & Remedies Code Section 34.048

“ If an officer or his deputy conducting an execution sale **directly or indirectly** purchases the property, the sale is void.”

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Sale # 2 Documents

**Sale # 2 Bid Sheet**

**Sale # 2 Sales Notice To Post**

**Sale # 2 Sales Notice For Publisher**

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## WHEN THE SALE IS COMPLETE

### Personal Property

- Deputies or clerical staff assigned to collect payment
- Issue a receipt for monies collected
- Within a reasonable time, issue a Constable's Bill of Sale

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## WHEN THE SALE IS COMPLETE

### Real Property

- Issue a receipt for monies collected
- Within a reasonable time, issue a Constable's Deed
- The Constable's Deed must be signed by the **Constable**, not by a deputy
- It is the buyers responsibility to have the deed recorded by the County Clerk

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## The Return

- Be thorough in your return to court
- Tell the story of what actions were taken
- Describe what property was levied, if any
- Were any monies collected
- Explain how you sold property or distributed the money
- Don't leave room for the court or anyone else to need to ask questions

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## What to include in the return

- **Break down all monies paid out:**
  - **Judgement**
  - **Court costs**
  - **Attorney fees**
  - **Costs of executing the writ**
    - **Storage fees**
    - **Towing costs**
    - **Publication costs**
    - **Excessive deputy time**
    - **Deed/bill of sale fee (if collected in your county)**

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**Sale # 1 Constables Return**  
**Sale # 1 Disbursement Instructions**  
**Sale # 2 Constables Return**  
**Sale # 2 Disbursement Instructions**

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*Preparation and Conducting  
Executions and Order of Sales*

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