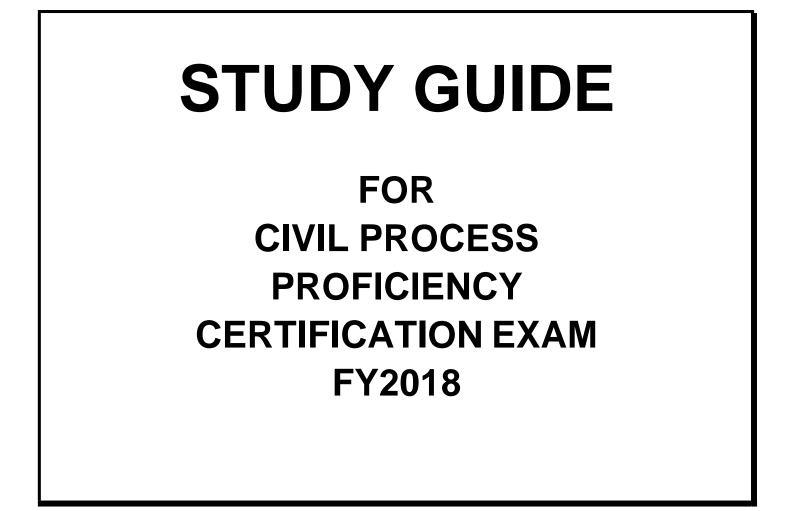


AT TEXASSTATEUNIVERSITY 1701 DIRECTORS BLVD., SUITE 530 AUSTIN, TEXAS 78744 (800) 687-8528 Website: <u>www.tictc.org</u>



TJCTC IS AN EDUCATIONAL ENDEAVOR OF THE JUSTICES OF THE PEACE AND CONSTABLES ASSOCIATION OF TEXAS, INC.

COPYRIGHT © 2017 Texas Justice Court Training Center

All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without the prior written permission of the Texas Justice Court Training Center unless such copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd., Suite 530, Austin, Texas 78744.

FY2018 Civil Process Proficiency Study Guide

Author: Constable Delton Thrasher Hood County, Pct. 1 - 2015 Revised October 2016 by Constable Buck Stevens – Brazoria County, Pct. 3 Deputy Paul Cassidy – Montgomery County, Pct.

4

Disclamer

The Study Guide for the Civil Proficiency Exam was prepared with every effort to ensure the accuracy of its production. However, it does not take the place of published law, statues, codes or rules of court. It should be viewed as a summary of the law at this particular time.

The Study Guide is not intended to be a representation of the exam or direct answers for the exam.

Abbreviations

- •TRCP Texas Rules of Civil Procedure
- •TCPRC Texas Civil Practices and Remedies Code
- •TPC Texas Property Code
- •FC Family Code
- •TC Tax Code
- •CCP Code of Criminal Procedure
- •PC Penal Code

Acknowledgment

Effective August 31, 2013 the following Rules were replaced:

TRCP 523 – 591 and 737 – 755 and Property Code 92.0563(d) and include:

534 - JP lawsuits

536 - Who may serve & method of service

536a - Duty of officer receiving & returning

737.4 - Service & return of citation

739 - Forcible Entry & Detainer citation

742 - Service of citation

742a - Service by delivery to premises

They were replaced with Rules 500-510

Citations

- Definition (TRCP 99)
- Official notification to defendant from plaintiff that a lawsuit has been filed. Directs defendant to file written response by certain day.
- TRCP 500.2 (New rule) Citation is the court issued document required to be served upon a party to inform the party that if has been sued.
- •Who may Issue (TRCP 89 & 501.1a)
- Justice , County, or District Court
- Small Claims Court Abolished as of 9/1/2013

Citations Requirements (TRCP 15, 99 & 501.1.b) • File Number • Style "The State of Texas" • Names of all parties • Signed by clerk under seal or by judge · Directed to defendant · Times the defendant must file and Name and location, address answer with court of court Name and address of attorney • Date of filing of the petition Notify about default judgements Date citation was issued

Citations

• Written answer must be filed by

- First Monday following 20 days by 10 a.m. (County & District)
- Due the 14th day after the day you were served (Justice Court)

DISTRICT and COUNTY Court Notice (Rule 99)

• The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

Citation

• JUSTICE Court – Notice (Rule 501.1.c)

"You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ and attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation"

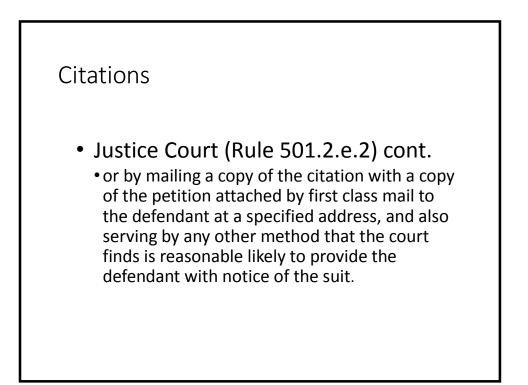
Citations Delivery Method Who can serve (TRCP 103 & 501.2a) Any Sheriff, Constable, person authorized by the Court (18 years of age), authorized by Texas Supreme Court, the clerk of the court, if the citation is served by registered or certified mail When can they be served Any day except Sunday unless issued as set out in TRCP 6 and 501.2.d

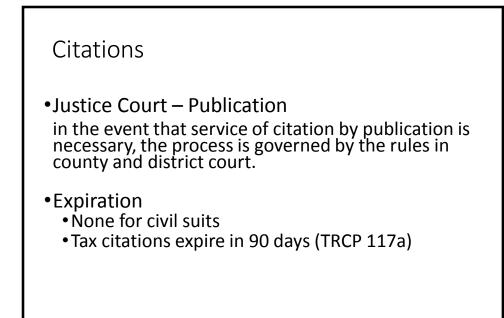


- Delivery Method
- •Personal (TRCP 106 & 501.2b)
 - Personal delivery to defendant
- Mail (TRCP 106 & 501.2b)
 - Sheriff, Constable, Clerk
 - Registered or certified mail, return receipt requested (restricted delivery, with return receipt or electronic return receipt requested)

Citations

- Alternate Service
- District and County (TRCP 106, 106b)
 - Leaving a copy with anyone over 16 years of age at the location specified
 - Any other manner approved by the court that will be reasonably effective in giving the defendant notice of the suit.
- Justice Court (Rule 501.2.e.1)
 - Mailing a copy of the citation with petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age



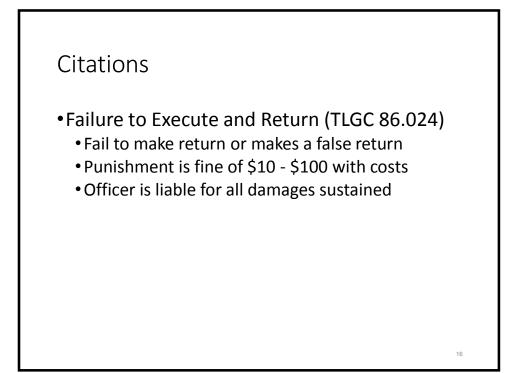


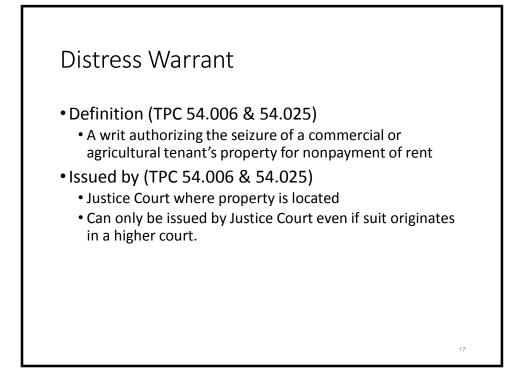
Citations

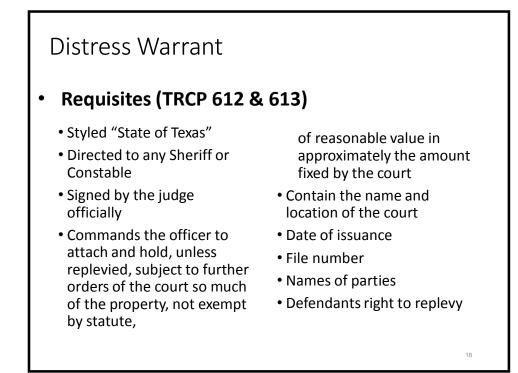
- Returns (TRCP 16, 105, 107, 501.3b)
 - Date and time received
 - Date and time delivered
 - Location of delivery
 - To whom delivery was made
 - How delivery was made (personal or alternate)
 - If not delivered, must show diligence used and where defendant can be found, if known

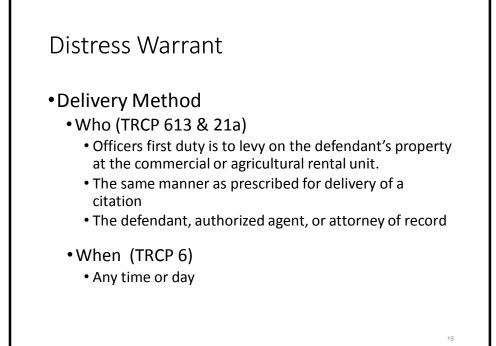
- Executing officers signature
- State elected officials name
- State department name
- Send original return to issuing court (a copy of return can be sent to attorney if requested)

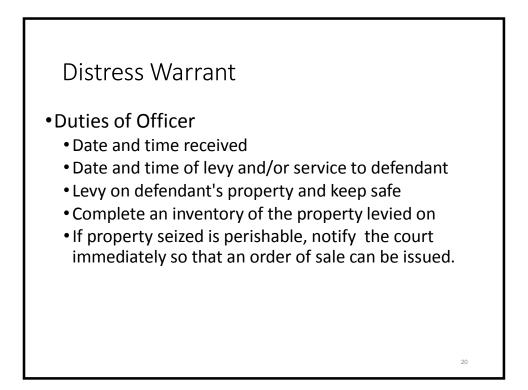
Citations • Returns (501.3b) – Justice Court the case number & case name the court in which the case is filed a description of what was served the date & time the process was received for service the person or entity served the address served the date of service or attempted service the manner of delivery or attempted service the name of the person who served or attempted service if the person above is a process server certified under the Supreme Court, the id number and expiration date any other info required by rule or law











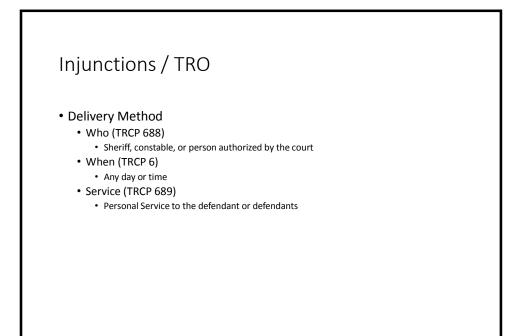
Distress Warrant

- Return (TRCP 16, 105, 106)
 - Date and time received
 - Date and time executed
 - Who was served
 - How was service obtained on the defendant
 - How the warrant was executed
 - The warehouseman's name, address, and phone
 - Inventory of all seized property
 - Replevy

Injunctions / TRO

- Definition
 - Commands the person(s) to whom it is directed to desist or refrain from the commission or continuance of the act enjoined or to obey and execute such order
- Who May Issue (TCPRC 65.021)
 - District or County Court

Injunctions / TRO **Requirements (TRCP 687)** • • Styled "State of Texas" State the date and time Directed to the parties for the hearing enjoined • TRO – no more than 14 Names of the plaintiff and days defendant • Injunction – returnable before 10 a.m. on the Nature of the application first Monday after the • Command the person or expiration of 20 days persons to desist or refrain Dated and signed by the from the act clerk and under the seal of the court



24

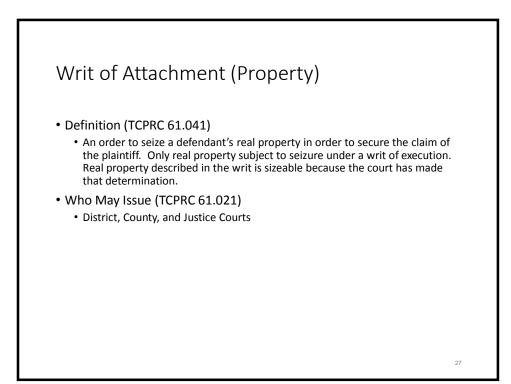
Injunctions / TRO

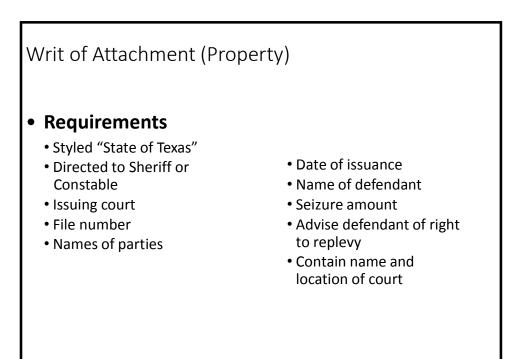
• Return (TRCP 16, 105, & 107)

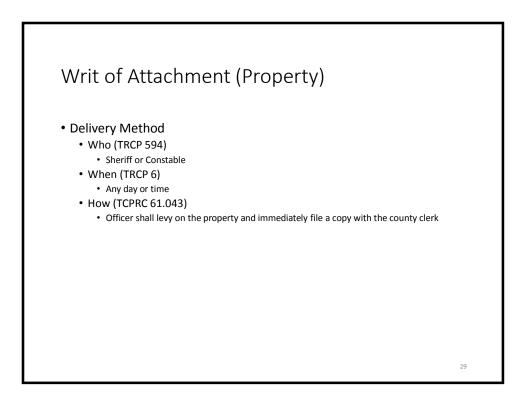
- Date and time received
- Date and time delivered
- How delivery was made
- Where delivery was made
- What was delivered
- Name and title of the elected official
- Signed in the servers official capacity
- If unexecuted, state diligence used to try to execute and reason(s) for not being executed

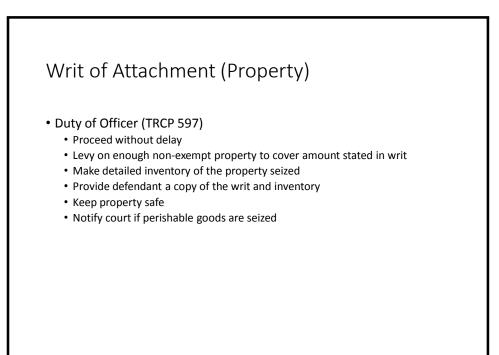
<section-header><list-item><list-item><list-item><list-item><list-item><list-item>

26

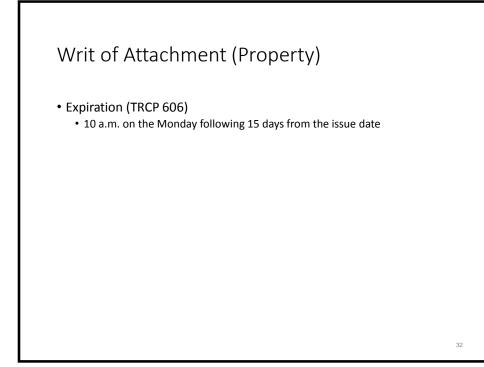




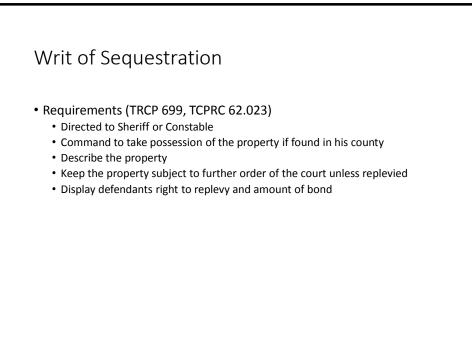




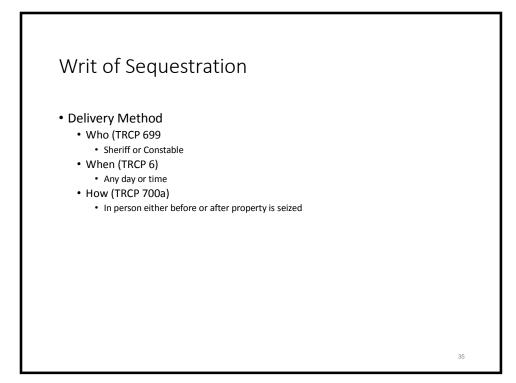
Writ of Attachment (Property) Return (TRCP 16, 105, & 107) Date and time received Date and time of seizure Location of delivery Describe actions taken Describe seized property court Writ of Attachment (Property)

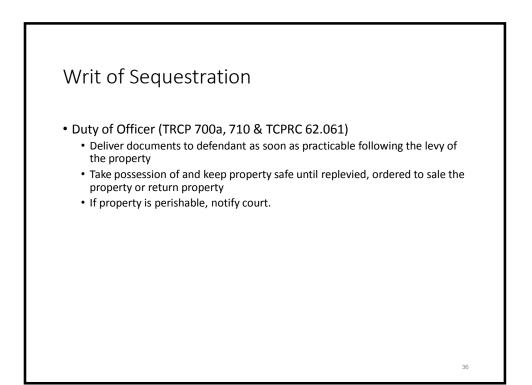


Writ of Sequestration Definition The process by which property is removed from the possessor pending the outcome of a dispute in which two or more parties contend for it. Who May Issue (TCPRC 62.021) District, County, and Justice Court



34





Writ of Sequestration Return (TRCP 16, 105, & 107) Date and time received Date and time of seizure Location of delivery Describe actions taken Describe seized property List name, address, and phone of storage facility Writ of Sequestration If replevied, deliver replevy bond to clerk of the court Executing officers signature State elected officials name Send to issuing Court

Writ of Sequestration

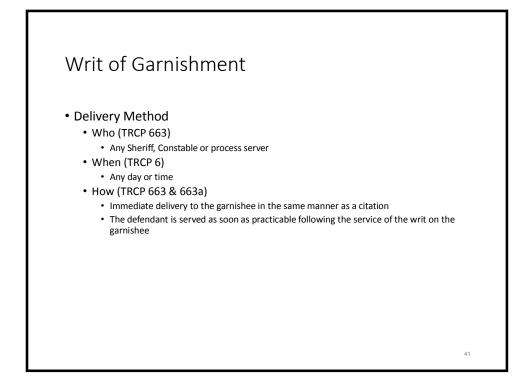
- Expiration (TRCP 15)
 - Returnable on the first Monday following 20 days from the date of service

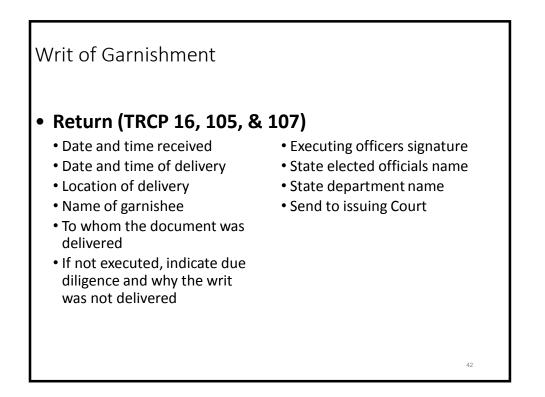
Writ of Garnishment

- Definition
 - A proceeding in which the property, money, or credits of a debtor are in the possession of, or owed by another, called a garnishee, is applied to the debt of the debtor.
- Who May Issue (TRCP 659 & TRCP 63.002)
 - District, County, or Justice Court



40





Writ of Garnishment

- Expiration
 - 30, 60, or 90 days.

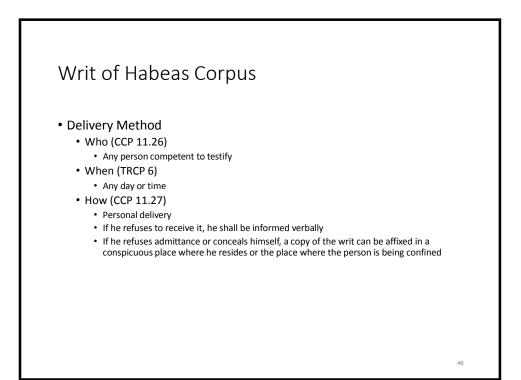
Writ of Habeas Corpus

- Definition
 - a court order that commands anyone having a person in custody to produce the person at the time and place named in the writ and to show why that person is being held in custody or under restraint
- Who May Issue (CCP 11.05)
 - Court of Criminal Appeals, District, or County Court

44

45

Writ of Habeas Corpus Requirements (CCP 11.02 – 11.04) • Styled "State of Texas" Hearing date Directed to anyone having command and/or control of a • Summary of facts person whose release or Issuing court return is sought Cause number • Name of person being Court clerk signature restrained or in custody Bear seal of the court • Fix time and place of return



Writ of Habeas Corpus

• Return (CCP 11.27)

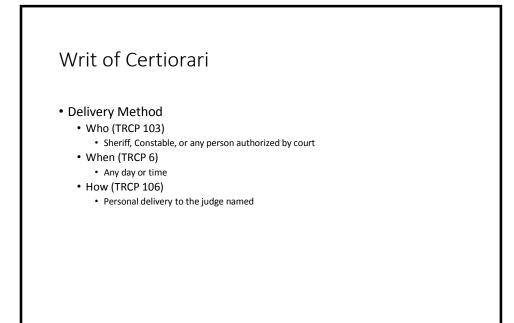
- Date and time received
- Date and time of delivery
- Location of delivery
- Name of defendant
- To whom the document was delivered
- How delivery was made
- If not executed, due diligence used and reasons why writ was not executed
- Signature of executing officer
- Elected officials name
- Department name

Writ of Certiorari

- Definition
 - A writ that commands a lower court to send all records about a particular case to a higher court
- Who May Issue (TRCP 311, 312)
 - County, District or higher court

Writ of Certiorari Requirements (TRCP 576) Styled "State of Texas" Directed to any Sheriff or Constable Issuing Court Cause number Command justice to immediately make and certify a copy of any and all documents concerning the named case and transmit them to the issuing court Signed by clerk of the court Bear the seal of the court

49



Writ of Certiorari Return (TRCP 16, 105, & 107) Date and time received Date and time delivered Location of delivery Name of judge to whom delivered How delivery was made Return to issuing court



- Definition
 - A writ requiring the respondent to appear and show cause why some matter of record should not be annulled or vacated or why a dormant judgment against that person should not be revived. (must be filed no later than two years after judgment becomes dormant)
 - A writ to establish control of a suit with the death of a plaintiff
 - A writ to establish responsibility in the event of the death of a defendant
- Who May Issue (TCPRC 31.006)
 - The court having the judgment record

Writ of Scire Facias

Requirements

- Style "The State of Texas"
- Signed by clerk under seal
- Name and location of court
- Date of filing of the petition
- Date citation was issued
- File Number

- Both Parties Names
- Directed to defendant
- Name and address of attorney
- Contain a date and time which the defendant may file a written answer with the court
- Address of the Clerk

Writ of Scire Facias

- Delivery Method
 - How (TRCP 106 & 501.2b)
 - Personal Service
 - Who (TRCP 151)
 - Sheriff, Constable, or any person authorized by court
 - When (TRCP 6 & 154)
 - Any time or day of the week except Sunday

• Expiration (TCPC 31.006)

• Writ conforms to rule for citation and does not expire.

Writ of Scire Facias

• Return (TRCP 16, 105, & 107)

- Date and time received
- Date and time delivered
- Location of delivery
- To whom delivery was made
- How delivery was made (personal or alternate)
- If not delivered, must show diligence used and where defendant can be found, if known

- Executing officers signature
- State elected officials name
- State department name
- Send original return to issuing court (a copy of return can be sent to attorney if requested)



<section-header><section-header><section-header><section-header><list-item><list-item><list-item><list-item><list-item><list-item><list-item><list-item><list-item><list-item><list-item><list-item><list-item><list-item><list-item>

Writ of Mandamus

- Requirements
 - Styled "The State of Texas"
 - · Directed to the parties enjoined
 - Court of issuance
 - Cause number
 - Seal and signature of court clerk
 - Name of parties, nature of application
 - Command the person to stop performing the act that has been enjoined
 - Hearing date

Writ of Mandamus

- Delivery Method
 - Who (TRCP 21a)
 - Any Sheriff or Constable, or any person competent to testify
 - When (TRCP 6)
 - Any day of the week except Sunday
 - How (TRCP 21a)
 - Personal delivery or by US Postal Service
- Expiration (TRCP 21)
 - On Hearing Date (documents must be delivered no later than three (3) days prior to hearing)

58

Writ of Mandamus Return (TRCP 16, 105, & 107) Date and time received Date and time delivered How delivery was made Where delivery was made What was delivered Name and title of the elected official Signed in the servers official capacity

Eviction Citation

- Definition
- Eviction the process of legally dispossessing a person of land or rental property. (Black's Law)
- Premises the tenant's rental unit, any area or facility the lease authorizes the tenant to use, the appurtenances, grounds and facilities held out for the use of tenant generally. (TPC 92.001)
- Who may Issue
- Justice Court in the precinct in which the rental property is located. (TPC 24.004)

60

61

Eviction Citation

Requirements (TRCP 510.4, TPC 24.0051)

- Be styled "the State of Texas"
- Be signed by the clerk under the seal of court or by judge
- · Contain the name, location and address of the court
- State the date of filing of the petition
- State the date of issuance of the citation
- State the plaintiff's cause of action and relief sought
- Be directed to the defendant
- State the name & address of attorney for plaintiff, or the address of the plaintiff

Eviction Citation

Requirements (TRCP 510.4, TPC 24.0051)

- state the day the defendant must appear in person for trial at the court issuing citation, which must not be less than 10 days nor more than 21 days after the petition is filed

- notify the defendant that if the defendant fails to appear in person for trial, judgment by default mat be rendered for the relief demanded in the petition

- inform the defendant that, upon timely request & payment of a jury fee no later than 3 days before the day set for trial, the case will be heard by jury

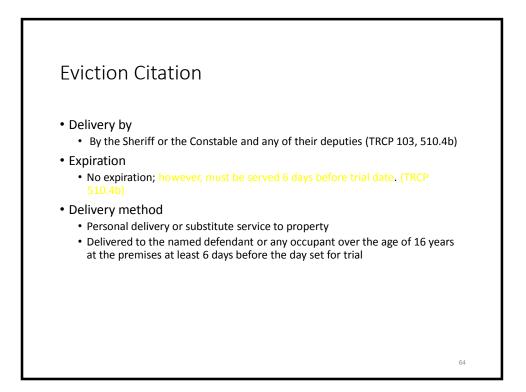
contain all warnings required by Chap 24 of the TPC

include the following statement, "for further information, consult Part
 V of the TRCP, which is available online & at the court listed on this citation

63

Eviction Citation

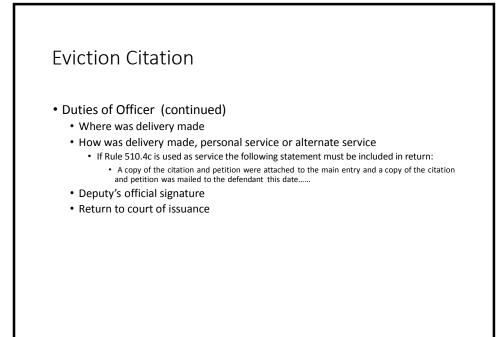
- Requirements
 - In bold print, in English and Spanish:
 - THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNER FEDERAL LAW, INCLUDING THE SERVCIEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501.ET SEQ), OR STATE LAW INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE LEGIBLE FOR FREE OR LOW COST LEGAL ASSISTANCE.



Eviction Citation

Duties of Officer

- Endorse the date and time received
- · Collect fees, issue receipt and enter into tracking system
- Attempt service at all addresses provided in the county, at two attempts at each address
- Citation and petition must be delivered
- Alternate service under Rule 510.4c may be granted by the judge when affidavit is submitted
- On returns, indicate date/time received
- Record date and time delivered



66

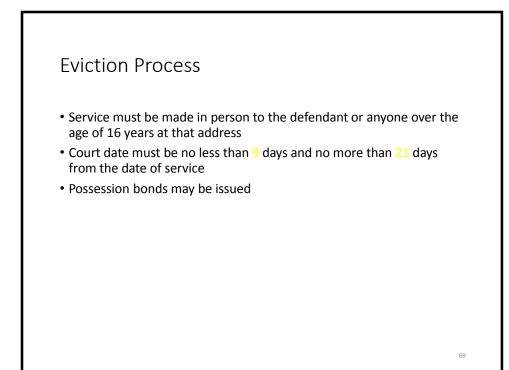
Eviction Citation

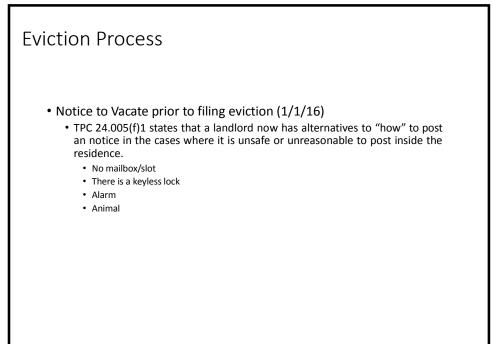
Comment

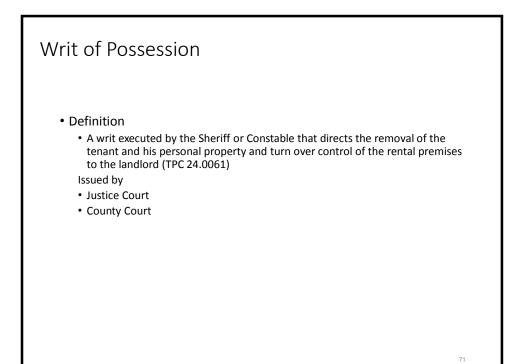
- The defendant is the only person that can be served at any address other that the address shown on the eviction citation.
- Substitute service can only be accomplished at the designated address for eviction.
- Rule 510.4c only requires two attempts at each address given for the defendant in the county where the property is located but the judge may require additional attempts for substituted service.

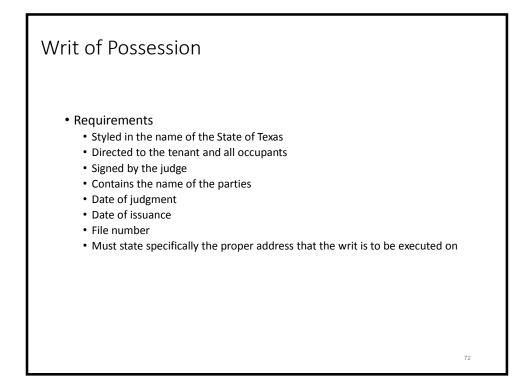
Eviction Process

- Notice to Vacate
 - 3 day notice- delinquent or back rent due
 - 30 day notice- foreclosure sale or breach of contract
 - 10 day notice- plaintiff uses attorney and wishes to collect those fees
 - Immediately-forcible entry (squatters)
 - Plaintiff files suit in precinct where rental property is located
 - Suit is for possession/back rent only (TRCP 746, 738)

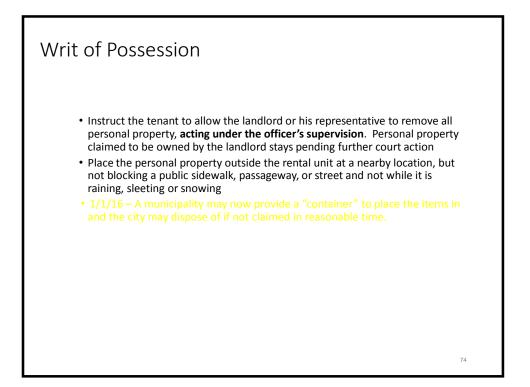


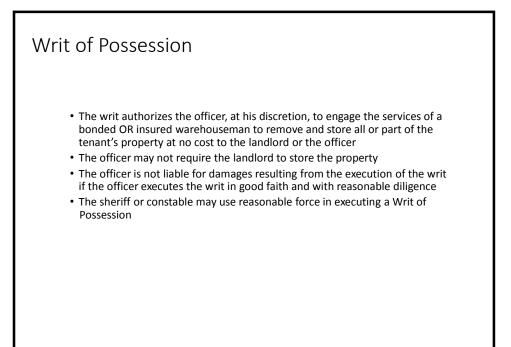


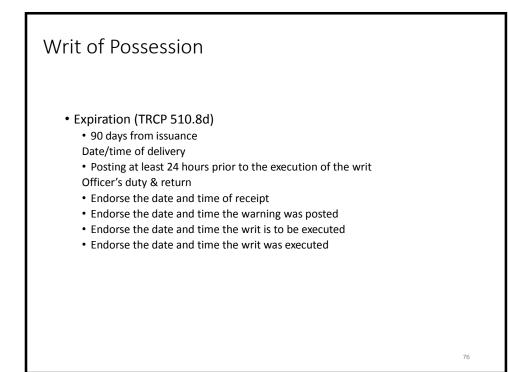


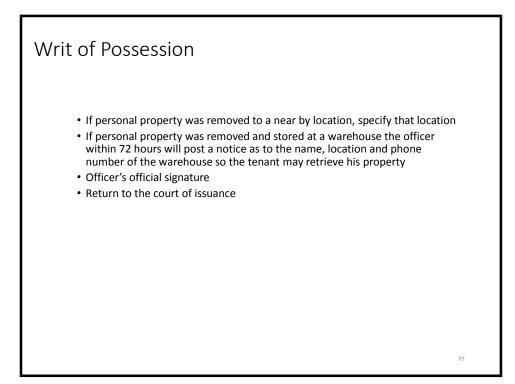


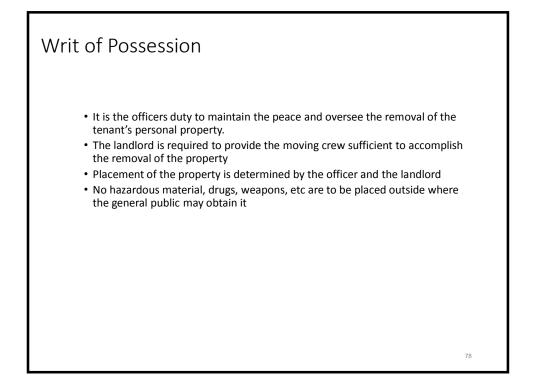
Writ of Possession Requires the officer to post written warning at least 81/2 by 11 inches on the front door notifying the tenant the writ has been issued and will be executed on or after a specific date and time, not sooner than 24 hours after the warning is posted The writ is executed when The premises are returned to the landlord Instruct the tenant and all persons claiming under the tenant to leave the premises immediately and, if the person fails to comply, physically remove them

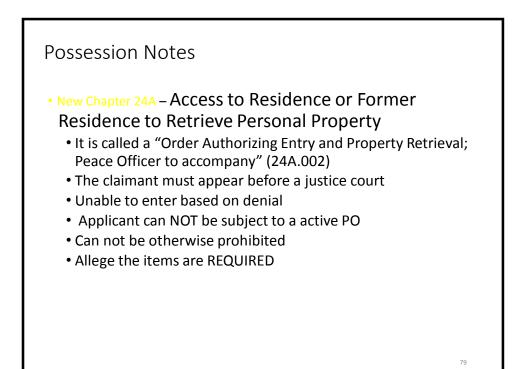


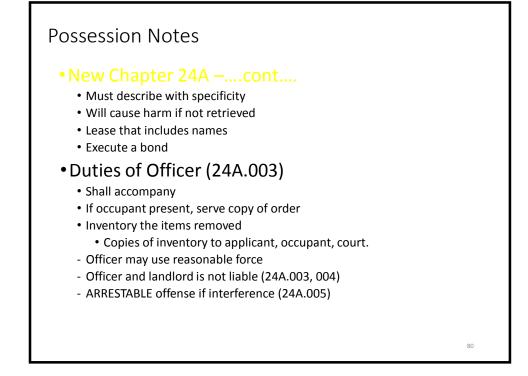










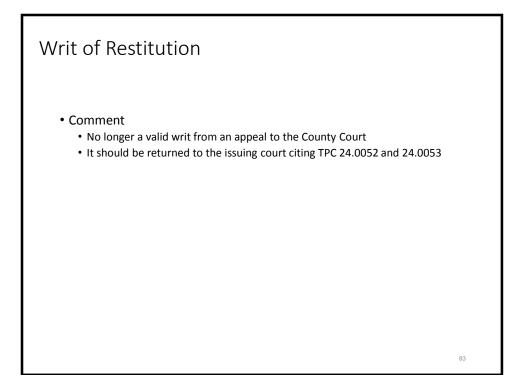


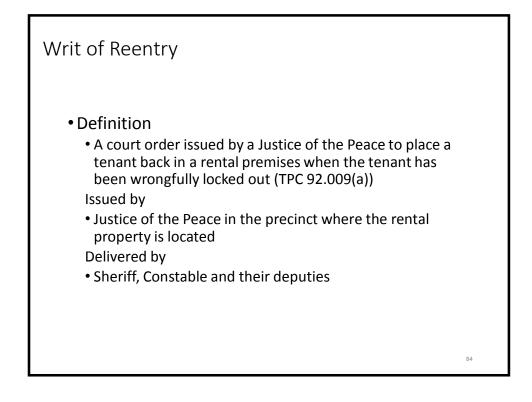
Landlord Updates

- – Landlord Violations has been raised to "the sum of one month's rent AND \$1000. (TPC 54.046)
- Tenants rights to a jury trial can NOT be waived in a lease. (TPC 92.006)
- Liability for landlord to lease to persons with certain known criminal records (TPC 92.025)
- An existing owner is still liable for deposits until they have transferred those deposits to a new owner. (TPC 92.110)
- A landlord may deduct the cost of re-key (TPC 92.156)

Repossession of Aircraft

- Chapter 30 Writ of Assistance for Repossession of Aircraft
 - Provides a writ to protect the officer and repossession agent (30.02a)
 - Agent to file petition with justice court





Writ of Reentry

•

- Requirements
 - Styled in the name of the State of Texas
 - Directed to the landlord
 - Names of the both parties
 - The premises the tenant will be placed back into
 - The landlord may request a hearing
 - Request a hearing within the first 8 days from service

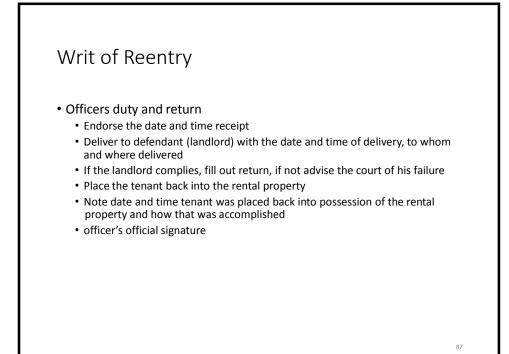
Writ of Reentry

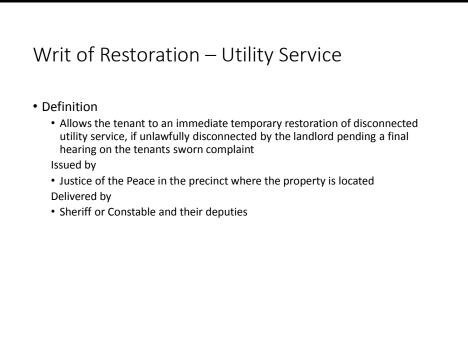
- File number
- Date of issuance
- Signed by the Justice of the Peace

Method of delivery

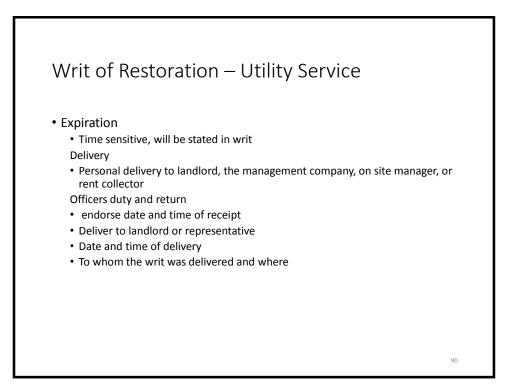
• Personal delivery only to the landlord or the landlord representative or as allowed by Rule 21a

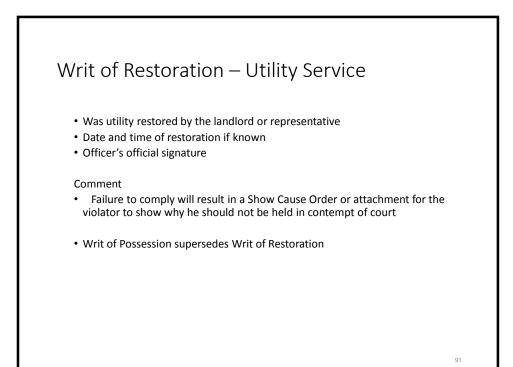
86

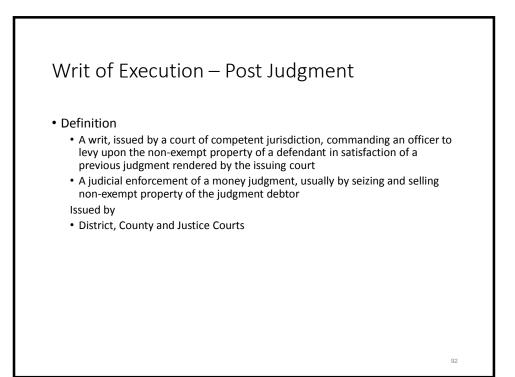




Writ of Restoration – Utility Service Requirements Styled in the name of the State of Texas Directed to the landlord or his representative Signed by the judge Date of issuance File number Names of the parties Describe the premises and service to be restored immediately for a temporary period







Writ of Execution – Post Judgment

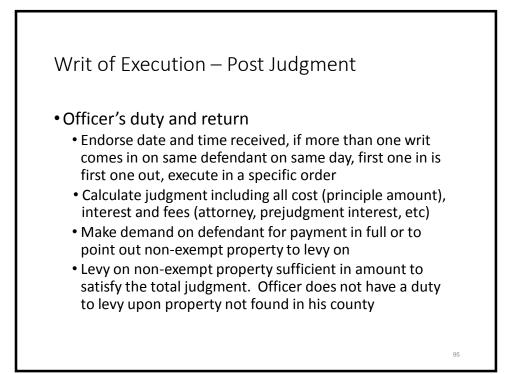
Requirements

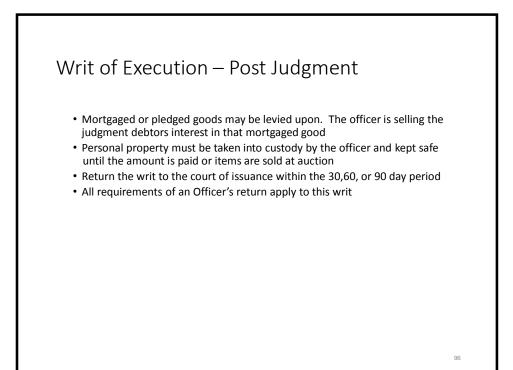
- Styled in the name of the State of Texas
- Directed to the Sheriff or Constable
- Signed by the clerk or justice officially
- Bear the seal of the court except for Justice Court
- Requires the officer to collect the judgment amount and cost
- · Describes the judgment
- · Correct copy of the Bill of Cost shall be attached

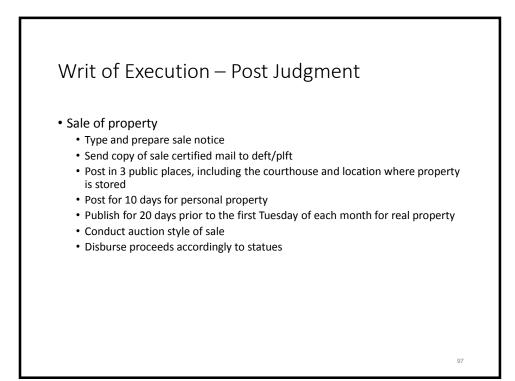
Writ of Execution – Post Judgment

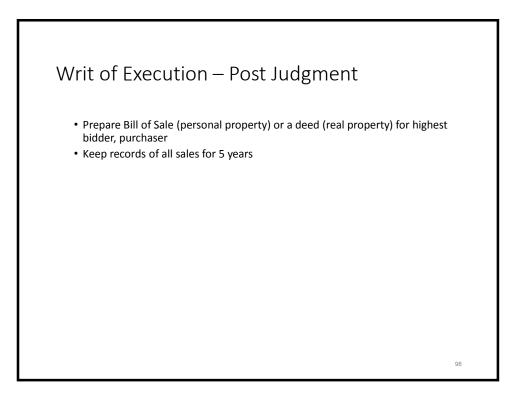
- Requires the return of the writ to the court of issuance within a 30, 60, or 90 day period
- Method of Delivery
- Make demand upon the defendant if he can be found in officer's county
- · Levy without delay on non-exempt property if not paid in full
- · Present defendant with copy of writ and calculation worksheet
- No longer are required to make multiple levies for cash at same location. May return after first levy or attempted levy

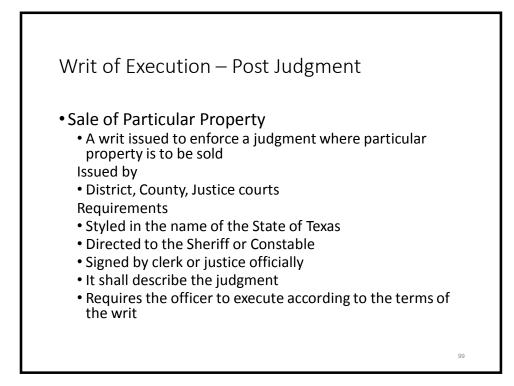
94

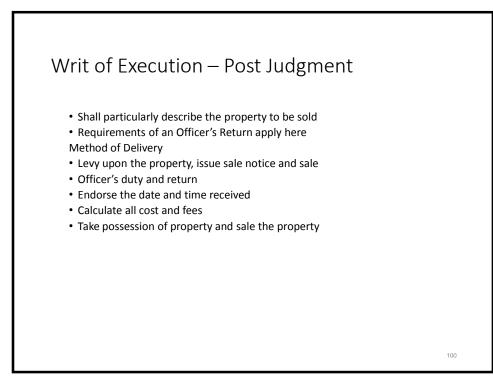


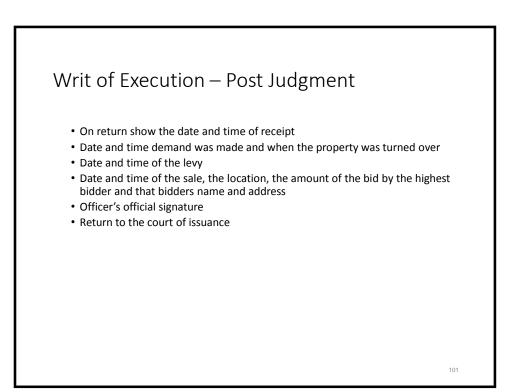


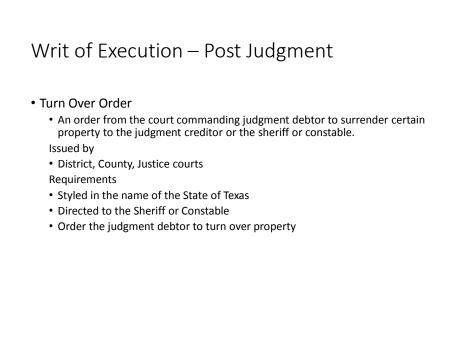


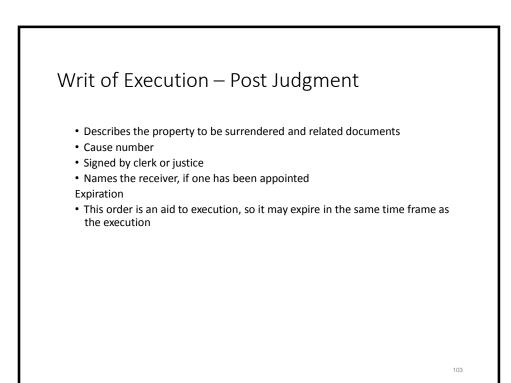


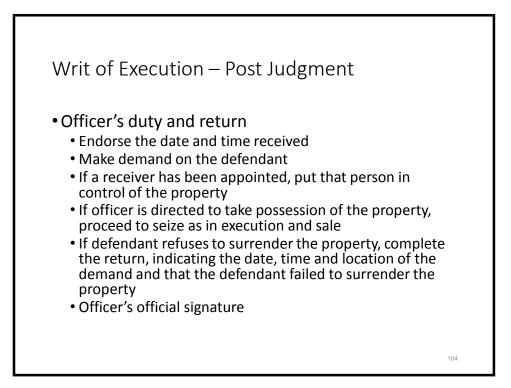


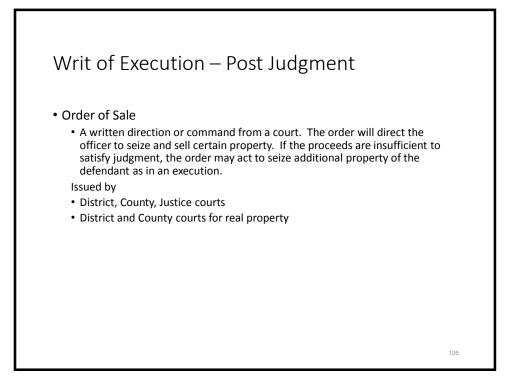


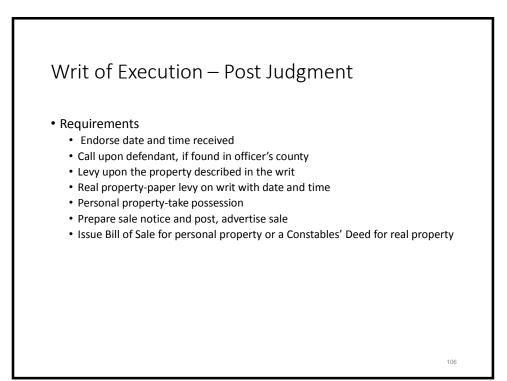


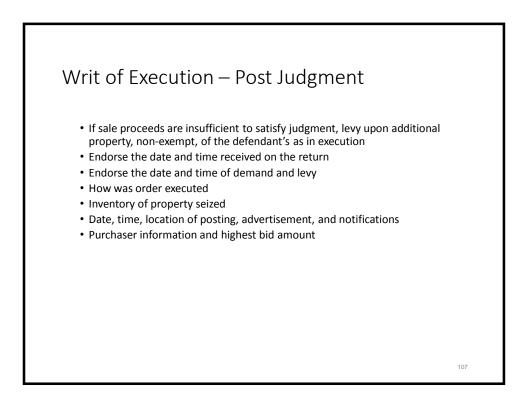


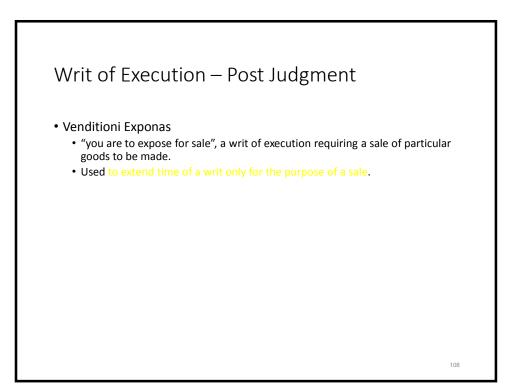


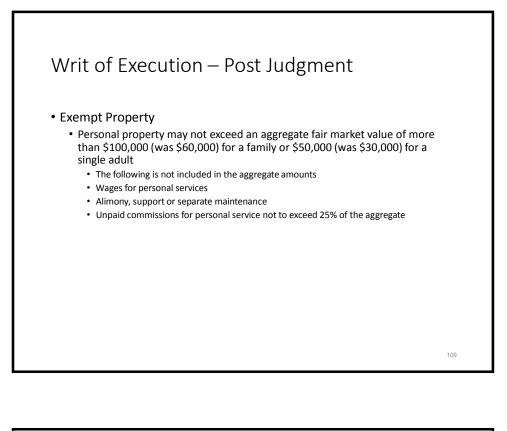


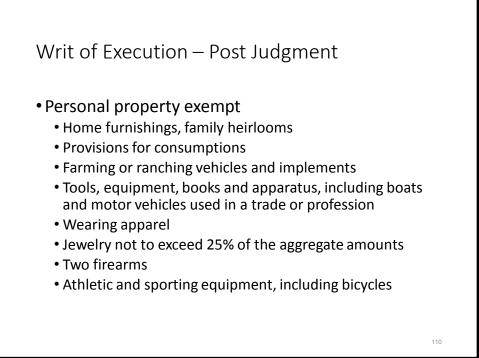


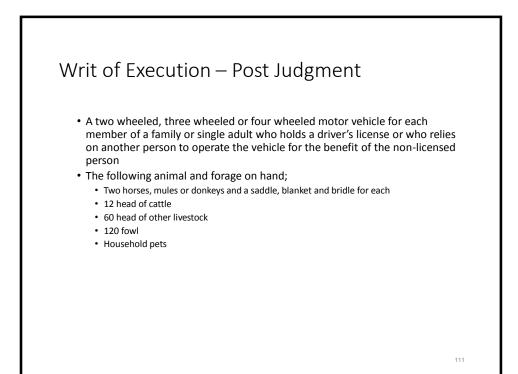


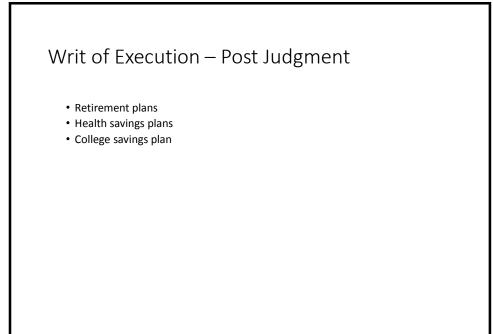


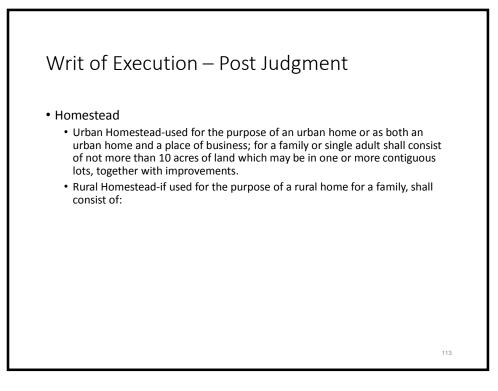


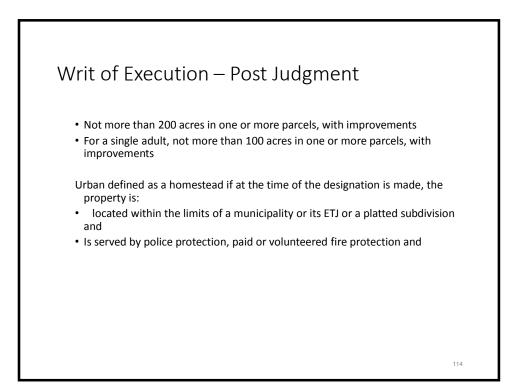












<section-header><list-item><list-item><list-item><list-item><list-item><list-item><list-item>