

Introductions to Executions: Part 1

Constable Buck Stevens
Constable
Brazoria County, Precinct 3

© Copyright 2023. 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 prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd, Suite 530, Austin, TX, 78744.

1

1

Resources:

- www.txcourts.gov Texas Rules of Civil Procedure (TRCP)
- www.statutes.capitol.Texas.gov Statutes other than TRCP
- www.thelawdictionary.org
- www.tjctc.org
 - Texas Civil Process Field Guide
 - Practical Guide to Writs of Execution Deskbook
- **Civil Process for Texas**, 2020-2021 Edition, by John Steinsiek

2

2

What Is A Writ Of Execution?

- A **post-judgment** writ commanding an officer to enforce a judgment by make demand upon defendant under one of the four types of Writs of Execution.
- A writ to put in force the judgment or decree of a court.
(thelawdictionary.org/writ-of-execution/)
- A writ commanding an officer to levy upon the non-exempt property of a defendant in satisfaction of a previous judgment rendered by the issuing court.
- TRCP 621: “The judgments... shall be enforced by execution or other appropriate process.”
- TRCP 505.2 and 507.4 Apply to JP Courts, specifically.

3

3

4 Types of Executions

1. Money Judgment
(TRCP 630)
2. Sale of Particular Property
(TRCP 631)
3. Delivery of Certain Property
(TRCP 632)
4. Recovery of Personal Property or its value (TRCP 633)

4

4

First Type

1. Money Judgment:

- States sum of amount due;
- States amount actually due at time of issuance;
- States applicable interest rate(s);
- Requires officer to satisfy judgment & costs from debtor's property subject to execution;

TRCP 630.

5

5

Second Type

2. Sale of Particular Property:

- Particularly describes property;
- Exemptions do not apply;
- Commands officer to seize/sell it;
- Tax suit is to satisfy tax judgment against property;
- a/k/a Order of Sale.

TRCP 631; TC 33.41

6

6

Third Type

3. Delivery of Certain Property:

- Particularly describes property;
- Exemptions do not apply;
- States who gets possession.
- Directs officer to deliver property.
- a/k/a Writ of Possession in foreclosure case.

TRCP 632.

7

7

Fourth Type

4. Recovery of Personal Property or its value:

- Same criteria as above;
- If for **personal property**, commands levy on non-exempt property if delivery of listed property cannot be made;
- Proceed as in execution;

TRCP 633

8

8

Quick Question 1

True or False:

A Writ of Execution can be issued so that a plaintiff can get possession of a particular piece of property.

1. True
2. False

9

9

**Who
May
Issue:**

Justice Court;

County Court;

District Court;

TRCP 621, 622

10

10

Definition: Judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state.

CPRC 35.001

Foreign Judgments

11

11

When Issued:

Not before 30th day after judgment, unless:

- Supersedeas bond or notice of appeal filed;
 - At least 31 days after appeal motion overruled.
- Motion for new trial or arrest of judgment filed;

TRCP 627

- Personal property to be transferred or secreted.

TRCP 628

12

12

Receipt of Writ

- Officer has a duty to:
 - Endorse date/time received;
 - Number writs if necessary.
- TRCP 636; CPRC 34.063

13

13

Who May Serve:

Any Sheriff;

Any Constable;

Their Deputies;

TRCP 103, 501.2

14

14

Requisites of Execution

- Describes judgment;
- Includes Bill of Costs;
- Requires execution according to its terms;
- Requires officer to make adjudged costs & further costs of executing writ;
- Requires Return.
- TRCP 629

15

15

Writ Example: Judgment Summary

ALIAS EXECUTION
(With Bill of Costs)

Cause No. 02-61953-00-0-4

475748

THE STATE OF TEXAS

To the Sheriff or Constable of Any County of the State of Texas, Greetings;

WHEREAS, at the Regular Term of the County Court at Law #4 of Nueces County, Texas on the 21st day of January, 2003, in a certain cause styled: **FROST NATIONAL BANK vs. ROSALES, JOE C., ET AL**, and numbered 02-61953-00-0-4 on the Civil Docket of said Court, Frost National Bank, Plaintiff recovered a judgment against **Joe C. Rosales And Laura Rosales, Jointly And Severally for \$4,009.14 With Interest Thereon At The Rate Of 11.45% Per Annum From January 13, 2000 Until Paid; And Attorney's Fees In The Sum Of \$1,336.00 With Interest Thereon At The Rate Of 10% Per Annum From 1-21-2003 Until Paid And That All Costs Of Court Herein Are Assessed Against Defendants. (Joe C. Rosales, 1000 Morningside St., Angleton, Tx 77515).**

16

Writ Example: Command

Now, THEREFORE, you are hereby commanded that of the goods and chattels, lands and tenements of the said **Joe C. Rosales And Laura Rosales, Jointly And Severally** you cause to be made the sum of **\$4,009.14 With Interest Thereon At The Rate Of 11.45% Per Annum From January 13, 2000 Until Paid; And Attorney's Fees In The Sum Of \$1,336.00 With Interest Thereon At The Rate Of 10% Per Annum From 1-21-2003 Until Paid And That All Costs Of Court Herein Are Assessed Against Defendants**

and the further sum of **\$342.00** Dollars, cost of suit together with your legal fees, and commissions for collecting the same, and the officer executing this writ shall execute the same according to law and the mandates hereof.

HEREIN FAIL NOT, and have you this writ showing how you have executed the same, together with said moneys collected as herein directed, before the above Court at the Courthouse thereof in Corpus Christi, Texas, (1) within **90 days** from the date of the issuance of this writ.

Issued and given under my hand and seal of said Court in Corpus Christi, Nueces County, Texas on this **13th day of October, 2021.**

17

Quick Question 2

Which of the following is the correct party to serve a Writ of Execution on a corporation?

- Shift supervisor,
- Gate guard, because it is a gated property,
- Manager's wife, who is also the bookkeeper, or
- Registered agent.

18

18

Service Fees

- Differ by county;
- Must be included in county's annual Fee Schedule in order to be collected;
- Set by Commissioners Court before October 1st each year;
- Effective date is January 1st of following year;
- Find it here: <https://comptroller.Texas.gov/transparency/local/sheriffs/>.
- LGC 118.131

19

19

20

Service Fees 2

- Constable may require payment prior to serving process from an out-of-county suit;
- Added to court costs if not paid within 10 days of request for payment;
- Not collected if Statement of Inability to Afford Payment of Court Costs (pauper's affidavit) has been filed with court. Fee is then added to court costs.

TRCP 126, 129, 145

20

Time Computations

- Excludes date of issuance;
 - Includes every day, including Saturdays, Sundays, and legal holidays;
 - Includes the last day of the period;
 - Rolls to next full business day if last day is a Saturday, Sunday, or legal holiday;
 - Time may be enlarged by the issuing court.
-
- TRCP 5, 500.5

21

21

Time Computations 2

- www.timeanddate.com/date/duration/html
 - Allows you to include end date in calculation

22

22

Quick Question 3

Sheriff's and Constable's Service Fees are set by:

- A. Secretary of State Office
- B. Comptroller's Office
- C. Commissioners Court
- D. Carlos Lopez

23

23

Quick Question 4

Does the computation of time for the life of a writ include the date of issuance?

- A. Yes
- B. No

24

24

Financial Calculations

What accrues interest?

What does not accrue interest?

Type of interest?

Periods of accrual?

Is total interest amount stated?

Is interest rate stated?

Where do I find applicable interest rates?

Is a contractual interest rate applicable?

25

25

What accrues interest?

- Read the writ;
- **Read it again!**
- Note each listed item/amount that accrues interest;
- Note the interest rate (if stated specifically);
- Find the interest rate (if **not** stated specifically);
- Note the effective interest date ranges;
- Add the sum(s) of each common criteria.

Financial Calculations 2

26

26

Consider This:

Now, THEREFORE, you are hereby commanded that of the goods and chattels, lands and tenements of the said **Joe C. Rosales And Laura Rosales, Jointly And Severally** you cause to be made the sum of **\$4,009.14 With Interest Thereon At The Rate Of 11.45% Per Annum From January 13, 2000 Until Paid; And Attorney's Fees In The Sum Of \$1,336.00 With Interest Thereon At The Rate Of 10% Per Annum From 1-21-2003 Until Paid And That All Costs Of Court Herein Are Assessed Against Defendants**

and the further sum of **\$342.00** Dollars, cost of suit together with your legal fees, and commissions for collecting the same, and the officer executing this writ shall execute the same according to law and the mandates hereof.

HEREIN FAIL NOT, and have you this writ showing how you have executed the same, together with said moneys collected as herein directed, before the above Court at the Courthouse thereof in Corpus Christi, Texas, (1) within **90 days** from the date of the issuance of this writ.

Issued and given under my hand and seal of said Court in Corpus Christi, Nueces County, Texas on this **13th day of October, 2021.**

27

Financial Calculations 3

- Money judgments **must** specify post-judgment rate.

FC 304.001

- Money judgment on a contract that provides for interest earns post-judgment interest at the lesser of:

- Rate specified in contract, or
- 18% per year.

FC 304.002

28

28

Financial Calculations 4

- Money judgment **not** under contract earns post-judgment interest at the following rate:
 - As listed by Consumer Credit Commissioner; **or**
 - Prime rate per Federal Reserve System;
 - 5% per year if Federal Reserve rate is less than 5%; or
 - 15% per year if Federal Reserve rate is more than 15%.

FC 304.003

29

29

Financial Calculations 5

- Consumer Credit Commissioner shall determine post-judgment interest rate for money judgments on the 15th day of each month.
- That is sent to the Secretary of State and published in the Texas Register.

FC 304.003, 304.004

30

30

Financial Calculations 6

- Post-judgment interest on money judgment begins on date of judgment and continues until judgment is satisfied.
- If case is appealed, interest does not accrue from filing of motion until subsequent ruling is made.

FC 304.005

31

31

Financial Calculations 7

- Post-judgment interest compounds annually.
 - “Per annum”.
 - FC 304.006
- Texas courts shall take judicial notice of published interest rates.
- FC 304.007

32

32

Quick Question 5

Who sets the post-judgment interest rates on the 15th of each month?

- A. Commissioners Court
- B. Office of Consumer Credit Commission
- C. Justice of the Peace & Constable's Association
- D. Texas Secretary of State
- E. None of the above

33

33

Financial Calculations 8

- **Prejudgment** interest accrues beginning on the earlier of:
 - The 180th day after defendant receives written notice of a claim; or
 - The date the suit is filed; and
 - Ends on the day **before** judgment is rendered.
- It is computed as **simple** interest and does not compound.

FC 304.104

34

34

Quick Question 6

Does post-judgment interest accrue during a stay of judgment or an appeal period?

- A. Yes
- B. No

35

35

Financial Calculations 9

Sources:

- www.occc.Texas.gov/publications/interest-rates/historical-interest-rate-summaries
- TJCTC: They can provide a spreadsheet to your office
- www.calculatorsoup.com/
- www.judgmentcenter.com/calculator.htm
- Judgment x (1 + Interest rate)^{Number of years}

36

36

Demand Letter

Address one to each
named
defendant/debtor;

Mail & hand-deliver
when demand is made;

Attach writ;

Include pertinent case
information.

37

37



Brazoria County Constable Precinct 1
Constable David Thacker

210 W. First Street
Freeport, Texas 77541
979.233.4188 Office
979.415.0610 Fax



March 12, 2020

Baywood Food, Inc. ETAL
c/o Michael A. Wood
113 Cedar Street
Lake Jackson, Texas 77566

Cause Number: 1145116

Court: County Civil Court at Law No. 2
Harris County, Texas

Oak Farms Dairy
vs
Baywood Food, Inc. ETAL

Judgment, Interest, and Costs Due to Date: \$37,791.95
Payment Made To: Constable David Thacker

Dear Baywood Food, Inc. ETAL and Michael A. Wood,

This letter is to inform you that a Writ of Execution was received by this department on February 18, 2020. The writ was filed against you by the above named party, and it requires immediate response. **DEMAND IS HEREBY MADE** for the above amount, and it must be paid by cash, cashiers check, or money order, and payable to the order of Constable David Thacker.

Unless the above amount is received by our office immediately, we will proceed with the writ and seize and sell any non-exempt property found in Brazoria County, Texas, as under execution, and the proceeds will be applied to the payment and satisfaction of the above listed judgment, interest due thereon, all costs of suit, and all costs of executing said writ, according to law. This notice is being delivered to you as a courtesy, with the intention of saving you time and additional costs. You may contact me at any of the listed phone numbers or by email at the below listed email address. Thank you or your cooperation and prompt attention in this matter.

Sincerely,

Carl D Herbst
Chief Deputy Constable
979-864-5885 Cell
carlh@brazoria-county.com

38

38

Due Diligence

“Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstance; not measured by an absolute standard, but depending on the relative facts of the special case”.

39

39

Due Diligence 2

- Include the following in your writ file:
 - Log of calls & conversations, emails;
 - Copies of demand letter, postal receipts, seizure notices, sale notices, bid sheets bill of sale/deed;
 - Handwritten notes;
 - Computer generated reports;
 - Photos.

40

40

Quick Questions 7

Who sets the prejudgment interest rates?

- A. Commissioners Court
- B. Office of Consumer Credit Commission
- C. Justice of the Peace & Constable's Association
- D. Texas Secretary of State
- E. None of the above

41

41

Exempt Property Hearings

42

42

New Rules

The Texas Supreme Court has issued modifications to rules related to civil judgments, garnishments, receiverships, and exempt property hearings.

43

43

What are Exempt Property Hearings?

Rules require a court to promptly set a hearing and stay proceedings concerning disposition of the property until that hearing is held, if the judgment debtor timely asserts an exemption.

-- Govt. Code § 22.0042(a)

44

44

Rules and Forms

The Texas Supreme Court has issued Rule 679b and new forms:

- To give a judgment debtor notice of their right to claim a property exemption;
- That the judgment debtor may submit; and
- To stay enforcement of the judgment and decide whether the property is exempt.

45

45

Rules and Forms 2

The rules and forms went into effect on May 1, 2022.

46

46

Rules and Forms 3

The **judgment creditor** must serve the judgment debtor with the Seizure Exemption Notice, Instructions and Exemption Claim Form within three business days after they have notice that property has been seized under a writ of execution.

47

47

Rules and Forms 4

- Seized property may not be sold within 14 days after service of those documents (17 days if service is by mail).
- If a judgment debtor files a Seizure Exemption Claim Form, the court must hold a hearing and the property may not be sold until the court determines the claim.

48

48

Rules and Forms 5

- The court must determine the Exemption Claim within 10 days after the judgment debtor files the claim.
 - The court may extend the time for good cause.
- If the court determines the property is exempt, the court must order its release within three business days.

49

49

Rules and Forms 6

Rule 679b and the Seizure Exemption Notice, Instructions and Exemption Claim Form are attached as a Handout.

50

50

Effect Of Plaintiff's Death

If plaintiff/creditor dies **after judgment**, writ **must** be issued **in the name of their legal representative**. An affidavit of death & certificate of appointment must be filed with the court.

- CPRC 34.002(a)

51

51

Effect Of Plaintiff's Death 2

If plaintiff/creditor dies **after judgment**, and his estate is not administered, writ must be issued **in plaintiff's name** shown in judgment. An affidavit showing that administration of the estate was unnecessary must be filed with the court that rendered judgment.

- CPRC 34.002(b)

52

52

Effect Of Plaintiff's Death 3

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

- CPRC 34.002(c)

53

53

Effect Of Defendant's Death

Death of defendant/debtor **after writ is issued** stays the execution proceedings, but any lien acquired by levy must be recognized and enforced by the county court in payment of the debts of the deceased.

- CPRC 34.003

54

54

Quick Question 8

If a plaintiff dies after judgment is rendered, in whose name must the Writ of Execution be issued?

- A. Plaintiff's
- B. Plaintiff's spouse
- C. Thea Whalen's
- D. Plaintiff's legal representative

55

55

CPRC 34.072 Timing of Execution and Return

- May return after first levy or attempt;
- Ensure seizure early enough to hold sale.

CPRC 34.073 Transfer of Writ

- First officer may transfer to officer in another precinct or agency within his county.

CPRC 34.073 No Duty to Levy Outside of County

- No duty to seize outside your county, unless real property partially in your county.

Timing, Transfer, & Seizure

56

Liability Issues

- CCP 2.16 Neglecting To Execute Process
 - Willful refusal or failure to execute;
 - \$10-\$2,000 fine for contempt, payable to court.
 - Only **the officer** is liable.

- CPRC 34.065 Failure To Levy Or Sell
 - Officer fails or refuses to levy or sell;
 - Sale could have taken place;
 - Officer & sureties are liable for actual damages only.

57

57

Liability Issues 2

CPRC 34.061 Duty To Ward Seized Personalty

- Keep property securely;
- Officer & sureties responsible for negligent loss;
- Injured party has burden of proof of actual value.

CPRC 34.063. Improper Endorsement Of Writ

- Fails to number writs, if more than one received same day;
- Falsely endorses writ;
- Officer & sureties liable for actual damages.

58

58

Liability Issues 3

CPRC 34.064 Improper Return Of Writ

- May file amended writ after initial return filed;
- Shall amend erroneous return within 30 days after learning of error.
- Fails or refuses to amend or file return.
- Contempt under Sec. 7.001(b).
 - Punishable by contempt fine of \$10-\$100, with costs;
 - Officer must be given 10 days notice of motion being filed.

59

59

Liability Issues 4

- CPRC 34.066 Improper Sale
 - Sells without giving notice;
 - Sells in manner other than prescribed by TRCP;
 - Officer liable for actual damages.
- CPRC 34.067 Failure to Deliver Money Collected
 - Fails or refused to deliver money when demanded;
 - Officer & sureties liable for amount collected at 1% a month.

60

60

Liability Issues 5

- CPRC 34.048 Purchase By Officer Void
 - If officer or his deputy conducting an execution sale directly or indirectly purchases the property, the sale is void.
- CPRC 34.075 Wrongful Levy
 - When **personal** property is levied and then claimed by party not in writ, property hearing is the only remedy.

61

61

Liability Issues 6

- LGC 86.021 General Powers & Duties (Constable)
 - May perform service **anywhere** in his county.
 - **May** serve process in his county or contiguous county.
 - **All** served process is presumed served under **official capacity**.
 - Collected fees **shall** be deposited with county treasurer of his county.

62

62

Quick Question 9

If an officer files a return with errors in it, how long does he have to file an amended return with the court?

- A. 10 days
- B. 30 days
- C. 60 days
- D. 90 days

63

63

Liability Issues 7

LGC 86.025. Unfinished Business

- If a constable vacates the office for any reason, all unfinished business shall be transferred to the succeeding constable and completed in the same manner as if the successor had begun the business.

64

64

Liability Issues 8

CPRC 34.062 Duty of Successor Officer

- If the officer who receives writ dies or leaves office before return of a writ, his successor shall proceed in the same manner as the receiving officer was required to proceed.

65

65

Liability Issues 9

CPRC 7.003 Liability Regarding Execution of Writs

- Officer is **not** liable for damages if officer acted in good faith to execute the writ by law and TRCP.

66

66

Questions?
Thank you!!!

67