

Garnishment and Receivership

Texas Justice Court Training Center

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What We Will Cover

Some Debt
Collection
Terminology

Garnishment

Receivership

Additional
Resources

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Let's Do a Little Translation!

- A “judgment creditor” is:
 - The person in whose favor a judgment was entered or someone who acquired the judgment later.
 - It is the person who “holds” the judgment that is being enforced!
 - Usually the plaintiff.
 - Or an “assignee”
 - Someone to whom the judgment was “assigned” after they bought it from the original plaintiff or a prior assignee.

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Let's Do a Little Translation!

- A “judgment debtor” is:
 - A person against whom a judgment has been entered.
 - Usually the defendant.
 - They owe the amount of the judgment to the judgment creditor.

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Let's Do a Little Translation!

- “Exempt property” is property that may **not** be seized to satisfy a judgment. For example:
 - Your home;
 - Personal property up to \$100,000 for a family or \$50,000 for an individual;
 - Current wages;
 - Alimony or child support;
 - Home furnishings, including heirlooms;
 - Two firearms;
 - Two horses, mules, or donkeys and a saddle, blanket, and bridle for each;
 - Household pets.
- See the Exempt Property Bench Card at:
<https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>

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Let's Do a Little Translation!

- “Non-exempt property” is property that is subject to seizure to satisfy a judgment.
 - It is any property that is **not** exempt.
- It can be seized by:
 - a Constable or Sheriff under a writ of garnishment or
 - a Receiver if authorized by a court
- and used to pay the amount of the judgment to the judgment creditor.

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Knowledge Check!

- A “judgment creditor” is:
 - A. Someone who owes the amount of a judgment to a debt collector or other creditor.
 - B. The person who “holds” the judgment that is being enforced and is trying to collect it.

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Knowledge Check!

- A “judgment debtor” is:
 - A. The person who owes the amount of the judgment to the person who holds the judgment.
 - B. A debt collector or financial institution in the business of collecting judgments.

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Knowledge Check!

- “Non-exempt” property means:
 - A. Property owned by the judgment debtor that **may not** be seized and sold to pay off a judgment against the owner of the property.
 - B. Property that is not exempt from seizure and therefore **may** be seized and sold to pay off a judgment against the owner of the property.

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Garnishment

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What is a Writ of Garnishment?

- It's a way to seize assets held by a third party (the garnishee) but that belong to or are owed to the judgment debtor.
- For example:
 - A judgment debtor has a bank account.
 - The bank holds the money but it actually belongs to the judgment debtor.
- A writ of garnishment is how the plaintiff (the garnishor) can require the bank (the garnishee) to turn over the judgment debtor's money to satisfy the judgment.

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Which Court May Issue a Writ of Garnishment?



Only the court that issued the judgment that is being collected may issue the writ of garnishment.



The clerk of a justice court may issue a writ of garnishment returnable to the court.

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What Property May be Seized?

- Only non-exempt **personal** property may be seized by a writ of garnishment.
- Real property (land) may not be seized this way.
- How does the plaintiff know what non-exempt personal property the judgment debtor has?
 - May use post-judgment discovery to find out!

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Exempt Property in Garnishment Proceedings

- This property is also exempt from garnishment:
 - Current wages
 - Worker's compensation benefits
 - Government assistance funds
- New rules went into effect on May 1, 2022 to allow a judgment debtor to assert that property sought in a garnishment proceeding is exempt!
 - See Handout 1.

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Step 1: Application for the Writ

- The plaintiff must file an application for a writ of garnishment stating that:
 - They have a final judgment against the judgment debtor; and
 - The judgment debtor does not have enough property in Texas to satisfy the judgment with a writ of execution.

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Step 1: Application for the Writ

Side Note: There is a separate procedure for a pre-judgment writ of garnishment but this rarely comes up.

If it does, please see the Civil Deskbook at page 134.

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Step 1: Application for the Writ (Form 1)

CAUSE NO. _____

§ _____ IN THE JUSTICE COURT

PLAINTIFF _____ § _____

v. § _____

PRECINCT _____

GARNISHEE _____ § _____

COUNTY, TEXAS

APPLICATION FOR WRIT OF GARNISHMENT

The undersigned Applicant makes this Application for a Writ of Garnishment based on the following:

- ☐ I have a valid judgment that is in effect. To the best of my knowledge, Defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment.
- ☐ I have filed a suit for a debt that is just, due, and unpaid. To the best of my knowledge, Defendant does not possess property in Texas subject to execution sufficient to satisfy the debt. This garnishment is not sought to injure Defendant or the garnishee. I have posted a bond in accordance with Rule 658a.

The following facts support the above statements:

- ☐ Additional information or affidavits are attached and incorporated by reference.

Defendant in the original suit: _____

The case number of the original suit: _____

The amount of judgment/debt owed as of the date of the application: \$ _____

The judgment date, if any: _____

Garnishee's name: _____

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Step 1: Application for the Writ (Form 1)

Garnishee's address for service: _____

Garnishee's officer for service purposes, if applicable: _____

Account name and number, if applicable: _____

WHEREFORE the applicant seeks assets held by a third party (Garnishee) and requests this court issue a Writ of Garnishment directed to the above-named Garnishee.

APPLICANT:

Applicant's Signature _____ Date _____

Address & Phone Number _____

Email _____

SWORN TO AND SUBSCRIBED before me on _____, 20____.

CLERK OF THE JUSTICE COURT OR NOTARY

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Step 2: Issuance of the Writ

- A garnishment case is filed and docketed as a **separate** proceeding against the garnishee.
- Once the requirements for issuance of the writ have been met, the clerk or judge must:
 - Docket the case in the name of the garnishor as plaintiff and the garnishee as defendant; and

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Step 2: Issuance of the Writ

- Issue a writ directing the garnishee to appear and state under oath what, if anything, it is indebted to the judgment debtor for and what property, if any, of the judgment debtor it has in its possession, and to hold any such property until further order of the court.

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Step 2: Issuance of the Writ

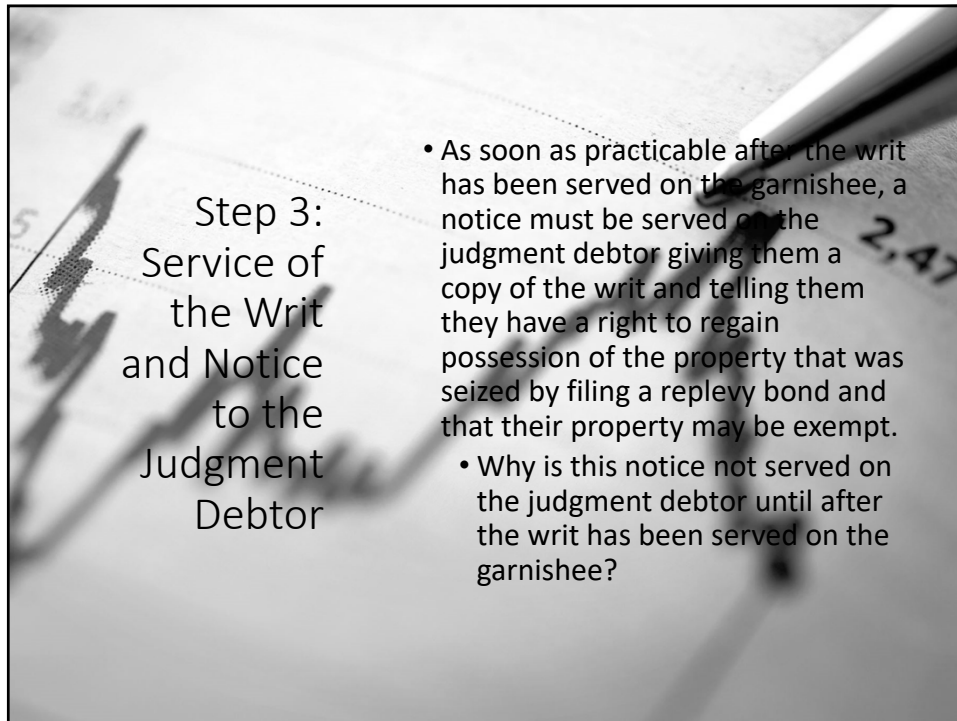
- The garnishee's answer must be filed by 10:00 a.m. on the Monday following the expiration of ten days after service of the writ on the garnishee.
- Filing fees:
 - \$5 writ fee for preparing and issuing the writ.
 - Most courts charge the standard civil filing fee (\$54 as of 1/1/22) since the rule says the case is docketed as a separate action. TJCTC agrees with this. It's okay not to charge it but be consistent.

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Step 3: Service of the Writ and Notice to the Judgment Debtor

- A writ of garnishment must be served by a Constable or Sheriff.
 - A private process server may not serve it.
- The clerk gives the writ to a Constable or Sheriff or to the plaintiff for them to deliver to a Constable or Sheriff.
 - The plaintiff will have to pay the service fee.

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**Step 3:
Service of
the Writ
and Notice
to the
Judgment
Debtor**

- As soon as practicable after the writ has been served on the garnishee, a notice must be served on the judgment debtor giving them a copy of the writ and telling them they have a right to regain possession of the property that was seized by filing a replevy bond and that their property may be exempt.
- Why is this notice not served on the judgment debtor until after the writ has been served on the garnishee?

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**Step 3:
Service of
the Writ
and Notice
to the
Judgment
Debtor**

- The notice may be served by a Constable, Sheriff, process server or any other person authorized by the court.**
- The court is not required to serve the notice but the court should verify that proper notice was given.**
- Usually the plaintiff will arrange service of the notice so it is served after the writ has been served.**

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Step 3: Service of the Writ and Notice to the Judgment Debtor (Form 2)

CAUSE NO. _____

PLAINTIFF _____ § IN THE JUSTICE COURT

v. _____ § PRECINCT _____

GARNISHEE _____ § _____ COUNTY, TEXAS

WRIT OF GARNISHMENT

THE STATE OF TEXAS

To _____, GARNISHEE, GREETINGS

Plaintiff filed suit against _____, Defendant in the Justice Court, Precinct _____, of _____ County, Texas, in cause number _____. In that case, Plaintiff alleges that the Defendant owes a debt of \$ _____. Plaintiff has applied for a writ of garnishment against you, _____, as Garnishee; **therefore** you are hereby

COMMANDED to appear before this court at or before 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service of this writ. You are to answer, under oath, if you are indebted to Defendant and what effects of Defendant you have in your possession. You also must state if you know any other person or entity that is indebted to Defendant or has effects belonging to Defendant in their possession.

YOU ARE FURTHER COMMANDED not to pay to Defendant any debt or deliver to Defendant any effects, pending further order of this court.

It is **ORDERED** that the officer executing this writ follow all orders and commands included and make a return to this court in a timely manner as the law directs.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____

COUNTY, TEXAS

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Step 3: Service of the Writ and Notice to the Judgment Debtor (Form 2)

NOTICE TO DEFENDANT OF WRIT OF GARNISHMENT

Note: This notice is to be served on the Defendant only after this Writ of Garnishment has been served on the Garnishee.

To _____, DEFENDANT: / A _____

Comandado:

Your money or property has been frozen or seized ("garnished") because _____ (the "Garnishee") has filed a garnishment proceeding. That means they are trying to get your money or property from _____ (the "Garnishee"), the company or person who has it, to pay a debt you owe. / *Se le ha congelado o embargado su dinero o propiedad porque _____ (el "Embargante"), ha establecido un auto embargatorio de embargo con lo adeudado su dinero o propiedad de _____ (el "Embargado"), que es la compañía o persona física que le debe, y como pago de lo que usted le adeuda.*

If you are an individual (not a company), your money or property may be protected ("exempt") from garnishment under federal or state law. Under Texas Rule of Civil Procedure 679b, the Garnishee must send you in the next few days a "Notice of Protected Property Rights" approved by the Supreme Court. Read that notice carefully for more information on what property can be protected and how to get your protected money or property back. You can ask the court to get your money or property back by turning in ("filing") the "Protected Property Claim Form" that will be sent with the Notice of Protected Property Rights. / *Si usted es una persona física (y no una compañía), su dinero o propiedad podrían estar exentos ("exentos") de ser embargados de acuerdo a la ley. Bajo las Reglas de los Procedimientos Civiles 679b, el Embargante debe enviarle a las próximas días una "Notificación Sobre Derechos de Propiedad Protegida" aprobada por el Tribunal Supremo de Justicia. Lea con cuidado esta notificación para que obtenga mayor información sobre qué dinero y propiedades están exentos y cómo recuperarlos. Puede solicitar que se le devuelva su propiedad y dinero que están exentos embargados ("exentados") ante el Tribunal al "Exclusión de Reclamo de Propiedad Protegida" que le será enviado junto con la "Notificación Sobre Derechos de Propiedad Protegida".*

You may also file a "motion to dissolve" or "motion to modify" this writ of garnishment with the court because your money or property is exempt from garnishment. You can also get your money back if you file a "replevy bond," which is cash or

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Step 3: Service of the Writ and Notice to the Judgment Debtor (Form 2)

other security in an amount set by the court. / Usted también *podría* presentar por escrito una "petición de disolución" o "petición de modificación" de este auto procesal de embargo, si que su dinero y propiedad están exentos de dicho embargo. También puede recuperar su dinero si presenta ante tribunales una "demanda reivindicatoria", la cual es una garantía en efectivo o con fiador en una cantidad impuesta por el tribunal.

You can find out more about exemptions and the garnishment process by visiting www.texaslawhelp.org/exempt-property. / Obtenga mayor información sobre las exenciones y el proceso judicial de embargo, visitando el sitio www.texaslawhelp.org/exempt-property.

You are encouraged to get a lawyer to help you. For information on free and low-cost legal services, visit www.texascourts.gov/programs-services/legal-aid or call the legal aid offices that serve your area: Texas RioGrande Legal Aid at (888) 988-9996, Lone Star Legal Aid at (800) 733-8394, and Legal Aid of Northwest Texas at (888) 529-5277. You can also call the State Bar of Texas at (800) 252-9690. / Se le recomienda que consulte a un abogado que le ayude. Para información sobre cómo obtener servicios de asistencia legal gratuitos o a un bajo costo, visite el sitio www.texascourts.gov/programs-services/legal-aid o llame a la oficina de asistencia legal que presta servicios en su área: Texas RioGrande Legal Aid al (888) 988-9996; Lone Star Legal Aid al (800) 733-8394; y Legal Aid of Northwest Texas al (888) 529-5277. También puede llamar al Servicio de Información de Abogados en el Colegio de Abogados de Texas al (800) 252-9690.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
_____, COUNTY, TEXAS

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Knowledge Check!

- A writ of garnishment may be used to seize any property of the judgment debtor held by the garnishee, including real property and current wages.

- A. True
- B. False

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Knowledge Check!

- An application for a writ of garnishment is filed:
 - A. As part of the same case in which the judgment was rendered; therefore, there is no filing fee for a writ of garnishment.
 - B. As a new and separate action from the original case in which the judgment was rendered; therefore, the court may charge the standard filing fee for a civil case.

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Knowledge Check!

- A writ of garnishment:
 - A. May be served by a private process server like any civil case.
 - B. Must be served by a constable or sheriff.

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Knowledge Check!

- The notice to the judgment debtor should be sent:
 - A. As soon as the garnishment case is filed.
 - B. At the same time the writ of garnishment is served on the garnishee.
 - C. Only after the writ of garnishment is served on the garnishee.

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Step 4: Garnishee's Response

- What happens next depends on how the garnishee responds:
 - Garnishee fails to answer.
 - Garnishee admits they hold assets of the judgment debtor.
 - Garnishee denies they hold any assets of the judgment debtor.
 - Garnishee's answer is disputed by the plaintiff or the judgment debtor.

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Step 4A: Garnishee Fails to Answer

- If the garnishee fails to answer, the court should enter a default judgment against the garnishee for the full amount of the judgment.
 - The default judgment is solely against the garnishee's assets and not against the assets of the judgment debtor.

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Step 4A: Garnishee Fails to Answer

But if the garnishee is a financial institution (like a bank), then the default judgment is only as to the existence of liability.

The plaintiff has to establish what that liability is.

They have to prove the "amount of actual damages proximately caused to the [plaintiff] by the financial institution's default."

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Step 4A: Garnishee Fails to Answer (Form 3)

CAUSE NO. _____

PLAINTIFF _____ § IN THE JUSTICE COURT
§
V. § PRECINCT _____
§
GARNISHEE _____ § _____ COUNTY, TEXAS

DEFAULT JUDGMENT AGAINST GARNISHEE

On _____, 20____, Plaintiff appeared for a default hearing. Garnishee failed to timely answer the writ of garnishment and failed to appear at the default hearing; and

The court **FINDS** in the suit of Plaintiff v. _____ Defendant, cause number _____ on the docket of this court, Plaintiff was awarded a judgment in the amount of \$ _____ against Defendant together with interest from _____, 20____; and **FINDS** that because Garnishee failed to answer the writ of garnishment issued on the judgment against Defendant, Plaintiff had the right to seek a default judgment against Garnishee.

The court further **FINDS** that Garnishee:

☐ Is not a financial institution; it is therefore **ORDERED** that Plaintiff recover from Garnishee the full amount of the judgment rendered against _____ Defendant, in the amount of \$ _____, together with

☐ Interest thereon at the rate of _____% compounded annually,

☐ and court costs of \$ _____.

☐ Is a financial institution; it is therefore **ORDERED** that Plaintiff recover from Garnishee the amount of \$ _____, which is the amount of actual damages caused to Plaintiff by Garnishee's default.

Important Notice

If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property.

El Aviso Importante

Si usted es una persona física (y no una compañía), su dinero o propiedad podrían estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property.

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Step 4A: Garnishee Fails to Answer (Form 3)

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____

COUNTY, TEXAS

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Step 4B: Garnishee Holds Assets of Judgment Debtor

- If the garnishee admits it is indebted to or holds assets of the judgment debtor, then the court must render judgment for the plaintiff against the garnishee.
 - Subject to an exempt property claim (discussed below in Step 6)!
- The judgment should be for the amount the garnishee holds for the judgment debtor up to the amount currently due on the original judgment (including costs and interest).

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Step 4B: Garnishee Holds Assets of Judgment Debtor

- For example: Carl is the judgment debtor and First Bank is the garnishee. The current amount due under the judgment against Carl (including costs and interest) is \$3,000 and First Bank holds \$400 in Carl's account. The judgment should be for \$400.
- But if First Bank holds \$8,000 in Carl's account, then the judgment should be for \$3,000 (the current amount due under the original judgment).

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Step 4B: Judgment on Writ of Garnishment (Form 4)

CAUSE NO. _____

PLAINTIFF _____ § IN THE JUSTICE COURT
§
§
v. _____ § PRECINCT _____
§
§
GARNISHEE _____ § _____ COUNTY, TEXAS

JUDGMENT ON WRIT OF GARNISHMENT

On _____, 20____, the court reviewed the sworn answer of Garnishee to the writ of garnishment in the above case. The court **FINDS** that Garnishee was indebted to _____.

Defendant when the writ of garnishment was served on Garnishee:

☐ in the amount of \$ _____; or

☐ had in its possession the following described effects:

_____; it is therefore

☐ **ORDERED** that Plaintiff recover from Garnishee \$ _____ with interest and all costs, including the costs in this proceeding.

☐ **ORDERED** that Garnishee deliver the above-described effects to the proper officer for sale under execution.

IT IS FURTHER ORDERED that the collection of any such indebtedness due by the Garnishee under this Judgment will prohibit Defendant from recovering the above amount from the Garnishee; and

IT IS FURTHER ORDERED that reasonable costs on behalf of Garnishee in the amount of \$ _____ are taxed against Defendant.

Important Notice

If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property.

El Aviso Importante

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Step 4B: Judgment on Writ of Garnishment (Form 4)

Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
_____, COUNTY, TEXAS

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Step 4C: Garnishee Denies it Holds any Assets of the Judgment Debtor

- If the garnishee files an answer denying that it has any of the judgment debtor's property, and does not know of anyone else who holds any of their property (or if it does, it identifies that person), then the court must enter a judgment discharging the garnishee.

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Step 4C: Garnishee Denies it Holds any Assets of the Judgment Debtor (Form 5)

CAUSE NO. _____	
_____ PLAINTIFF v. _____ GARNISHEE	§ IN THE JUSTICE COURT § § § PRECINCT _____ § § § _____ COUNTY, TEXAS

JUDGMENT DISCHARGING GARNISHEE

On _____, 20____, the court reviewed the sworn answer of Garnishee to the writ of garnishment in this case. The court **FINDS** Garnishee was not indebted to _____ Defendant in the original action, when the writ of garnishment was served on Garnishee.

It further appears from the answer that Garnishee does not have any effects of Defendant in its possession and did not have any effects in its possession when the writ of garnishment was served. In its answer Garnishee has denied having knowledge of any other persons who are indebted to Defendant or who have effects in their possession that belong to Defendant.

Garnishee's answer is satisfactory in all respects and has not been controverted by Plaintiff or Defendant; it is therefore **ORDERED** that Garnishee, is discharged from the writ of garnishment; and it is further **ORDERED** that Garnishee shall recover from Plaintiff its costs in the amount of \$_____ for filing its answer in this case.

Important Notice

If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property.

El Aviso importante

Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property.

ISSUED AND SIGNED on _____, 20____.

 JUSTICE OF THE PEACE, PRECINCT _____
 _____ COUNTY, TEXAS

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Step 4D: Garnishee's Answer is Controverted

- Either the plaintiff or the judgment debtor may controvert the garnishee's answer.
- In that case, if the garnishee is a resident of the county where the case is pending, then the court will try the issues that are controverted.
- But if the garnishee is a resident of another county, then the issues that are controverted must be tried in a court in that county.
 - If that happens, the court must transfer the case to that county.

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Step 4D: Garnishee's Answer is Controverted (Form 6)

CAUSE NO. _____

PLAINTIFF _____ § _____ IN THE JUSTICE COURT
v. § _____
GARNISHEE _____ § _____ PRECINCT _____
§ _____ COUNTY, TEXAS

NOTICE TO GARNISHEE OF TRIAL DUE TO CONTROVERTED ANSWER

An application for a writ of garnishment and your answer as Garnishee have been filed in this case, and an affidavit controverting your answer has been filed by:

☐ Plaintiff
☐ Defendant

YOU ARE THEREFORE NOTIFIED that this case is set for trial on _____, 20____.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
_____, COUNTY, TEXAS

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Step 5: Court Costs and Attorney's Fees

- If the garnishee is discharged based on its answer, then the costs (including reasonable attorney's fees for the garnishee) are taxed against the plaintiff.
- If the garnishee's answer is not controverted, and the judgment is against the garnishee, then costs are taxed against the judgment debtor.
- If the answer is controverted, then the costs are awarded based on the outcome of the trial.

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Step 6: What the Judgment Debtor May Do

- Exempt Property Claim!
- Replevy
- Motion to Substitute Property
- Motion to Dissolve the Writ of Garnishment

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Step 6A: Exempt Property Claim

- When a judgment creditor has notice that a writ of garnishment results in the freezing or seizure of an individual judgment debtor's personal property, the judgment creditor must serve the judgment debtor with:
 - A Notice of Protected Property Rights;
 - The Instructions for Protected Property Rights Form; and
 - The Protected Property Claim Form.
- See Handout 1.

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Step 6A: Exempt Property Claim

- The judgment creditor must serve these documents on the judgment debtor within **three** business days after they receive notice the judgment debtor's property has been frozen or seized.
- The judgment debtor's property may not be sold or distributed to the judgment creditor within 14 days after service of these documents (17 days if service is by mail).

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Step 6A: Exempt Property Claim

- The judgment creditor must serve these documents on the judgment debtor within **three** business days after they receive notice the judgment debtor's property has been frozen or seized.
- The judgment debtor's property may not be sold or distributed to the judgment creditor within 14 days after service of these documents (17 days if service is by mail).

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Step 6A: Exempt Property Claim

- If the judgment debtor files a Protected Property Claim Form, the court must hold a hearing and the frozen or seized property may not be sold or transferred in the meantime.
- Each party is entitled to notice of the hearing.
- The court must determine the exemption claim within 10 days after the judgment debtor files the exemption claim.
- Burden of proof is on the judgment debtor.

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Steps 6B and 6C: Replevy and Motion to Substitute Property

- Replevy: This means the judgment debtor may recover their assets by posting a replevy bond payable to the plaintiff in the amount set by the court's order.
- Motion to Substitute Property: The judgment debtor may file a motion to substitute property worth enough to satisfy the garnishment order.

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Step 6D Motion to Dissolve or Modify the Writ

- Motion to Dissolve or Modify the Writ: The judgment debtor may move to dissolve or modify the writ. They must admit or deny each reason for issuing the writ or explain why they cannot do so.
- The filing of the motion stays further proceedings. The court must hear the motion promptly (may be less than three days) after notice to the plaintiff.

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Step 6D Motion to Dissolve or Modify the Writ

- If the judgment debtor denies the grounds for issuance of the writ, the burden is on the plaintiff to prove those grounds.
- If the judgment debtor seeks to dissolve or modify the writ based on personal property exemptions and provides the information on the Personal Property Claim form, then the court must follow the procedures in Rule 679b for exempt property claims.

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Knowledge Check!

- Adam files a garnishment case against Heavenly Bank seeking to collect \$5,000 on a judgment against Eve. Heavenly Bank is busy with new business and fails to file an answer to the writ of garnishment. The court should:
 - A. Enter a default judgment against Heavenly Bank for \$5,000.
 - B. Enter a default judgment against Heavenly Bank only on liability and require Adam to prove his damages due to the bank's default.

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Knowledge Check!

- Same facts but Heavenly Bank files an answer stating that Eve has an account with the Bank in which there is \$2,000. Eve does not dispute Heavenly Bank's response. The court should:
 - A. Enter a judgment for Adam against Heavenly Bank for \$5,000.
 - B. Enter a judgment for Adam against Heavenly Bank for \$2,000.
 - C. Dismiss the case since Eve did not appear.

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Knowledge Check!

- Same facts but Heavenly Bank files an answer stating that Eve no longer has an account with the Bank and therefore it does not hold any of her assets and does not know where any of her assets are located. The court should:
 - A. Set the case for trial.
 - B. Order Eve to pay off the judgment held by Adam.
 - C. Enter a judgment discharging Heavenly Bank.

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Knowledge Check!

- Same facts but Heavenly Bank files an answer stating that Eve has an account with the Bank in which there is \$8,000 and Eve files a response disputing the Bank's answer. She claims the account belongs solely to her husband and not to her. The court should:
 - A. Dismiss the case since Eve does not have an account with the Bank.
 - B. Enter a judgment for Adam for \$4,000 since this is community property.
 - C. Subpoena Eve's husband and find out why he hasn't paid the judgment off.
 - D. Set the case for trial to determine who owns the account.

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Knowledge Check!

- Same facts but Eve files a Protected Property Claim Form claiming that all the money in the account is either child support payments or social security benefits and therefore exempt from seizure. The court should:
 - A. Dismiss the case.
 - B. Set a hearing on Eve's exempt property claim within 10 days.
 - C. Order the parties to go to mediation.

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Receivers

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What is a Receiver?

- A receiver is a person appointed by the court who has the authority given to him by the court in the order appointing him as a receiver.
 - Usually this means the authority to take possession of the judgment debtor's non-exempt property, sell it and pay the proceeds to the judgment creditor to satisfy the judgment.

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What is a Receiver?

- A receiver basically serves the same function as a constable or sheriff but only has the powers granted to him by the court in the order appointing him.
- Most debt collectors want the court to appoint a receiver rather than using a writ of execution or a writ of garnishment!
 - Why might that be the case?

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Where Does the Court's Authority to Appoint a Receiver Come From?

- A law saying a court may "aid" a judgment creditor by:
 - **Appointing a receiver** with authority to take possession of non-exempt property, sell it and pay the proceeds to the judgment creditor.
- Civil Practice and Remedies Code § 31.002

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Where Must the Application to Appoint a Receiver be Filed?

- With the court that issued the judgment that is being enforced; or
- A court in which a foreign judgment has been domesticated (rarely happens).

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What Must the Judgment Creditor Prove?

- For the court to appoint a receiver the judgment creditor must prove that:
 - The judgment debtor owns property; and
 - That property is not exempt from attachment, execution or seizure and therefore may be used to satisfy the judgment.

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What Must the Judgment Creditor Prove?

- Cases hold that the court must have some evidence before it that establishes the “necessary conditions” for appointment of a receiver (on the previous slide).
 - This is usually submitted by affidavit but could be done with testimony at a live hearing.
- How much evidence is sufficient is within the court’s discretion.

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Is the Court Required to Appoint a Receiver?

- If the judgment creditor cannot show that the judgment debtor has non-exempt property, then the court should not appoint a receiver.
- How strict the court wants to be in scrutinizing the judgment creditor’s affidavit is up to the court.
- For example, the court could ask the judgment creditor what evidence they have that the judgment debtor does have non-exempt property.
- If a court does appoint a receiver it must use the form issued by the Texas Supreme Court (discussed below).

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Fees and Costs

There is no filing fee for an application to appoint a receiver.

Costs are normally included in an order appointing a receiver since the judgment creditor is entitled to recover reasonable costs, including attorney's fees.

But the receiver's fee must be reasonable and fair based upon the work the receiver does.

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Supreme Court Has Issued a Form for Appointing a Receiver

The Texas Supreme Court has issued a form that Justice Courts are **required** to use for appointment of a receiver.

The form went into effect on May 1, 2022.

The form is on the next three slides and is attached as Form 7.

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CAUSE NO. _____ PLAINTIFF (JUDGMENT CREDITOR) _____ v. _____ DEFENDANT (JUDGMENT DEBTOR) _____	§ § § § § §	IN THE JUSTICE COURT PRECINCT _____ _____ COUNTY, TEXAS
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ORDER APPOINTING RECEIVER

The court has considered Judgment Creditor's Application for Appointment of a Receiver under Texas Civil Practice and Remedies Code § 31.002. After reviewing the evidence and the court's file, the court **FINDS** that the judgment rendered in Cause No. _____ is valid, final, and fully payable. The judgment awarded was \$_____, including costs, with interest at the rate of _____% to be compounded annually.

On _____ (date), the amount of any credits, payments, and offsets was \$_____.

The court **FINDS** that the judgment remains unsatisfied; that Judgment Debtor owns property that is not exempt from attachment, execution, or seizure for the satisfaction of the judgment; and that Judgment Creditor is entitled to the court's aid in reaching Judgment Debtor's nonexempt property to satisfy the judgment.

The court also **FINDS** _____

 _____.

It is therefore **ORDERED** that the following person ("Receiver") is appointed under Texas Civil Practice and Remedies Code § 31.002 with authority to take possession of Judgment Debtor's nonexempt property that is in Judgment Debtor's possession or is subject to Judgment Debtor's control, sell the property, and pay the proceeds to Judgment Creditor to the extent required to satisfy the judgment. Judgment Debtor's nonexempt property may include financial accounts, certificates of deposit, and money-market accounts held by a third party.

Receiver's Information:
 Name: _____
 Address: _____

New Supreme Court Order Appointing Receiver (Form 7)

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Email Address: _____

Telephone Number: (____) ____-____

State Bar No.: _____

Receiver's Additional Limited Powers: Receiver also has the following limited authority. Receiver may: (1) obtain Judgment Debtor's credit information and credit reports; (2) obtain Judgment Debtor's financial information and records from Judgment Debtor or a third party; (3) certify copies of this Order; and (4) negotiate and obtain installment payment agreements with Judgment Debtor, if Receiver reasonably believes that a payment agreement is the best option to satisfy the judgment and Receiver provides Judgment Debtor with the Notice of Personal Property Rights approved by the Supreme Court of Texas. Receiver cannot reduce the total balance owed under the judgment without Judgment Creditor's authorization.

Personal Property Rights of Judgment Debtor: Receiver must comply with Texas Rule of Civil Procedure 679b.

Turnover: Judgment Debtor and any third party in possession of Judgment Debtor's property is **ORDERED** to turn over to the Receiver Judgment Debtor's nonexempt property within _____ days after receipt of this Order.

Time Period: This Receivership terminates on _____ (date, not to exceed 180 days after the date this Order is signed), unless extended by the court on request of Judgment Creditor or Receiver and on good cause shown.

Receiver's Fee: Receiver's fee is conditionally set at _____% of the funds collected during the receivership, subject to the Judgment Debtor's written agreement or later determination of reasonableness based on written agreement of the Judgment Debtor or proof of the work performed and the results obtained. The court-approved fee will be taxed as costs against Judgment Debtor, and Receiver may collect that fee from Judgment Debtor in addition to the amount collected to satisfy the judgment.

Receiver's Oath: Receiver must file an oath to perform their duties faithfully before acting under this Order.

Receiver's Bond:
☐ No bond required; or
☐ Receiver must execute a good and sufficient bond in the amount of \$_____ before acting under this Order.

New Supreme Court Order Appointing Receiver (Form 7)

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Receiver's Expenses: Receiver must provide an accounting or receipts of any reasonable and necessary expenses, including those for storage of any property seized, to the court. Court-approved expenses will be taxed as costs against Judgment Debtor, and Receiver may collect those expenses from Judgment Debtor in addition to the amount collected to satisfy the judgment.

Attorney's Fees: Judgment Creditor's reasonable attorney's fees will be taxed as costs against Judgment Debtor.

Receiver to Hold Property: Receiver must not disburse funds to Judgment Creditor or sell property within 14 days after serving Judgment Debtor with the Notice of Protected Property Rights, the Instructions for Protected Property Claim Form, and the Protected Property Claim Form approved by the Supreme Court of Texas, or within 17 days if service was by mail. If Judgment Debtor asserts an exemption, Receiver may only disburse funds to Judgment Creditor or sell property with Judgment Debtor's written consent or a court order.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
_____, COUNTY, TEXAS

New Supreme Court Order Appointing Receiver (Form 7)

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Approval of Receiver's Fees

- The receiver's fees are only conditionally approved in the order appointing a receiver.
- Usually they ask for 25% of the judgment amount.
 - But this is in addition to that amount.
 - So if the judgment is for \$10,000, they will collect \$12,500 to cover the receiver's fee.

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Approval of Receiver's Fees

- When they have collected the judgment (or the receivership terminates), they have to come back to the court and show that the fees are reasonable based on the work they did and the results they obtained.
- The court may approve the amount requested or reduce it if it is not reasonable.
- See TJCTC's Order to Disburse Funds (next slide and Form 8).

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<p>CAUSE NO. _____</p> <p>PLAINTIFF _____</p> <p>v. _____</p> <p>DEFENDANT _____</p>	<p>§ _____ IN THE JUSTICE COURT</p> <p>§ _____</p> <p>§ _____ PRECINCT _____</p> <p>§ _____</p> <p>§ _____ COUNTY, TEXAS</p>
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ORDER TO DISBURSE FUNDS IN RECEIVERSHIP

On _____, 20____, this court reviewed Receiver's Request to Disburse Funds and attached documentation including: a summary of work completed, money collected, and receipts during the receivership from _____, 20____ to _____, 20____.

The court **FINDS** the total amount collected by Receiver during this time period is \$____.

The court **FINDS** that:

☐ The Receiver's Fee as stated in the Order Appointing Receiver (____%) is reasonable based on the work performed and the results obtained as shown by Receiver's submitted evidence.

☐ The Receiver's Fee as stated in the Order Appointing Receiver is not reasonable based on the work performed and the results obtained as shown by the Receiver's submitted evidence and is now **ORDERED** set at the reasonable amount of _____% of the funds collected or \$_____.

It is **ORDERED** that the funds remaining minus any fee or reimbursement for receipts owed to Receiver be disbursed to Plaintiff, _____.

Receipts (if any): \$ _____

Receiver Fee: \$ _____

Total Amount to be Disbursed to Plaintiff: \$ _____

It is **FURTHER ORDERED** that in the event any funds remain after the above disbursements, then such funds be returned to Defendant.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
COUNTY, TEXAS

TJCTC Order to Disburse Funds in Receivership (Form 8)

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Exempt Property Claim

- As explained above, when a receiver seizes property of a judgment debtor, they must notify them of their right to assert an exempt property claim.
- The seized property may not be sold within 14 days after the notification (17 days if notice is by mail).
- The judgment debtor may file an Exempt Claim Form.
- The court must determine the Exemption Claim within 10 days after it is filed.

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Additional Resources

- Garnishment module! You may watch it here:
<https://www.tjctc.org/onlinelearning/selfpacedmodules.html>
- Civil Deskbook (3d ed. Oct. 2021) at pages 131 – 148.
- Legal Board: search for garnishment, turnover, receiver!
- Forms: <https://www.tjctc.org/tjctc-resources/forms/Small-Claims.html>

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Questions?

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THANK YOU!

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