

Exempt Property Hearings

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1

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2

Today's Class

Some Debt
Collection
Terminology

Exempt
Property
Hearings

Additional
Resources

3

Debt Collection Terminology

4

Judgment Creditor

- 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.

5

Judgment Debtor

- A person against whom a judgment has been entered.
- *Usually the defendant.*
- They owe the amount of the judgment to the judgment creditor.

6

Case Types

- Small Claims
- Debt Claims
- Usually in post-judgment enforcement:
 - Receivership/Turnover Order
 - Execution
 - Garnishment
 - Anything else??

7

Exempt Property

- Exempt property is property that the law allows a person to keep away from creditors if they owe a debt.
- Each state chooses what property is exempt.
- The types of property are generally those types that would allow a person to keep their job and have a place to live.

Exempt Property Benchcard

What is Exempt Property?

Texas property law exempts certain categories of property from seizure to satisfy a debt. This means that if a judgment is entered against a person, it can only be satisfied by specific categories of properties that are not exempt by the law called, *non-exempt property*. Chapter 41 and 42 of the Texas Property Code govern most property exemptions.

Real Property		
Type	Amount	Statute
Rural Homestead	Family	200 acres
	Single Adult	100 acres
Urban Homestead	10 acres	Property Code 41.001, 41.002
Burial Plots	One or more	Property Code 41.001

Personal Property – No Aggregate Limits	
Type	Statute
Current Wages for Personal Services	Property Code 42.001
*except for the enforcement of court-ordered child support payments, spousal maintenance, defaulted federal student loans, and federal income taxes	
Professionally Prescribed Health Aids	Property Code 42.001
*of debtor or debtor's dependent	
Alimony, Spousal Support, or Spousal Maintenance	Property Code 42.001, 42.0021
Child Support	
Bible or Other Book Containing Sacred Writings of a Religion	Property Code 42.001, 42.0021
Savings and Retirement Accounts	
College Savings Plans	Property Code 42.0022

<https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>

8

Common Exempt Property in Texas

9

Homestead

- Each person or family can designate a homestead that will be safe from creditors.
- Most people know about this, because there are also property tax benefits to designating a homestead. See <https://comptroller.texas.gov/taxes/property-tax/exemptions/residence-faq.php> for more info.

10

Size of a Homestead

Real Property			
Type	Amount		Statute
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Urban Homestead	10 acres		
Burial Plots	One or more		Property Code 41.001

11

Rural vs. Urban

A homestead is considered to be **urban** if, at the time the designation is made, the property is:

- located within the limits of a **municipality** or its extraterritorial jurisdiction or a platted subdivision; *and*
- **served by** police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

- electric; natural gas; sewer; storm sewer; and water.

Property Code 41.002(c)

12

Manufactured & Mobile Homes

- Generally treated as **PERSONAL property!**
- Owner can elect to treat as real property by following procedures in Property Code 2.001
 1. Make sure the Statement of Ownership (Occupations Code 1201.207) reflects that the owner has elected to treat as real property; and
 2. File a certified copy of the Statement of Ownership in the real property records in the county where the home is located
- Helpful FAQs for owners can be found at TDHCA's website:
<https://www.tdhca.state.tx.us/mh/faqs-sol.htm>

13

Current Wages

- Current wages are exempt except for to pay state-ordered child support payments, spousal maintenance, federally guaranteed student loans in default, or federal income taxes owed
CPRC 63.004
- Most often current wage issues come up in garnishment

14

Current Wages Definition

- Current wages are an employee's pay that is due for personal services
- Notice this doesn't include commissions paid to an independent contractor – Texas courts have held that those are not current wages for personal services
Campbell v. Stucki, 220 S.W.3d 562, 567 (Tex. App.—Tyler 2007, no pet.);
Pitts v. Dallas Nurseries Garden Ctr., Inc., 545 S.W.2d 34, 36 (Tex. Civ. App.—Texarkana 1976, no writ)
- Once the money is deposited in a bank account, it is no longer current wages

15

Retirement, Healthcare, & College Savings Plans

- Why do you think these are exempt?
- In addition to state law, many of these are covered by federal laws making them exempt.

16

Co-Mingled Property

- If a person mixes exempt and non-exempt property (usually money in a bank account), it may lose its exemption

17

What about
businesses?

18

HB 3774 & New Rules Related to Exempt Property

19

House Bill
3774

Added Government
Code § 22.0042

20

What does this statute do?

- Creates a procedure for a judgment debtor to assert an exemption to the seizure of their personal property
- Requires a court to stay a proceeding and have an exemption hearing
- Required the Supreme Court to issue rules implementing the statute

21

Supreme Court Order 21-9152

- The rules are required to:
 - Include a **plain language notice** to judgment debtors about their rights under these rules
 - Must be in **English** and **Spanish** translation
 - Include **forms** (also English with a Spanish translation) that include **instructions** on how to use the form
 - **List all exemptions** under state and federal law
 - Provide information on **how to access free or low-cost legal help**

22

What does this
mean for justice
courts??

23

Changes to Implement

New judgment forms with the appropriate language

- Updated forms on TJCTC website

New garnishment notices

New receivership order

Exempt property hearings

- Notice of Protected Property Rights, Protected Property Claim Form, and Instructions must be served by receiver or judgment creditor on the judgment debtor

24

Exempt Property Hearings

25

Exempt Property Hearing Procedure

1. Judgment debtor files a Protected Property Claim for or another sworn document with the same information.
2. Court sets the hearing and notifies the parties (including receivers, constables, or sheriffs involved in the case).
 1. Hearing must be within 10 days of when the exemption claim was filed unless there is good cause to extend the time.
3. The receiver or officer cannot sell the judgment debtor's property until after the court determines the exemption claim.

26

The Exempt Property Hearing

- Burden of Proof
 - On the judgment debtor
 - Can be met with the sworn statement if it is not challenged
- If the court determines the property is exempt, the court must order it released within 3 business days

27

Common Issues

28

Businesses

- *Remember, only individuals have exempt property.*
- If the judgment is against a business, and that business owns the seized property, it likely will be non-exempt.

29

What if they check all the boxes??

- This happens all the time!
- The judge will want to go down the list to determine if the seized property fits in any of the exempt property categories.
- Remember, this is civil hearing, so the judge can develop the facts to make their determination.

30

Resources

31

Forms

- Exempt Property Claim Form (*Texas Supreme Court*)
- Exempt Property Claim Form – Instructions (*Texas Supreme Court*)
- Notice of Protected Property Rights (*Bilingual; Texas Supreme Court*)
- Updated judgment forms for all money judgments
- Updated garnishment forms
- All forms can be found on TJCTC Forms Page:
<https://www.tjctc.org/tjctc-resources/forms.html>

32

Resources You May Provide to the Public

- Toolkit: My Debt Collection Rights in Texas by Texas Appleseed - <https://mydebtcollectionrights.org/>
- Texas Law Help - <https://texaslawhelp.org/>
- Texas State Law Library Self-Help - <https://www.sll.texas.gov/legal-help/>
- Texas Attorney General Debt Collection and Relief - <https://www.texasattorneygeneral.gov/consumer-protection/financial-and-insurance-scams/debt-collection-and-relief>
- TJCTC Self-Represented Litigant Page – www.tjctc.org/srl

33

Exempt Property Self-Paced Module

Coming soon!

34

Questions???