

An aerial photograph of a dense city skyline, likely Chicago, with numerous skyscrapers and a large body of water (Lake Michigan) visible in the background under a cloudy sky. The text is overlaid on the center of the image.

Receivership and Exempt Property Hearings

Texas Justice Court Training Centre

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What We Will Cover

Some Debt
Collection
Terminology

Turnover
Orders

Receivership

Exempt
Property
Hearings

Additional
Resources



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.

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.



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>





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.



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.

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.



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.

Poll

- We're going to talk today about turnover orders and receivership which are ways to collect a judgment. But what are some other ways to collect a civil judgment:
 - Writ of Execution?
 - Order of Contempt?
 - Abstract of Judgment?
 - Capias pro fine?
 - Writ of Garnishment?

A close-up photograph of a single, golden-brown turnover, likely a ham and cheese turnover, with a flaky, layered crust. The turnover is drizzled with white icing in several parallel lines across its top surface. The background is plain white.

Turnover Orders and Receivership

What is the Turnover Statute?

- A law saying a court may “aid” a judgment creditor by:
 - Ordering a judgment debtor to “**turn over**” non-exempt property to a Constable or Sheriff to satisfy a judgment; or
 - **Appoint a receiver** with authority to take possession of non-exempt property, sell it and pay the proceeds to the judgment creditor.
- These are two different procedures!

What Needs to be Shown for a Turnover Order?



- The court that the application is filed in is a court of jurisdiction, which means either:
 - The court that issued the judgment; or
 - A court where a foreign judgment has been domesticated (hardly ever happens).

AND

- The judgment debtor owns property that is non-exempt and therefore may be used to satisfy the judgment.

What Needs to be Shown for a Turnover Order?

- Because the statute only authorizes a turnover order upon proof of the necessary facts, the court must have “some evidence” before it that establishes the facts the judgment creditor must show (listed on the previous slide).
 - Usually this is done in an affidavit.
 - But the court could hear live testimony at a hearing.
- How much evidence is sufficient is up to the court.

Turnover Order: Must the Court Hold a Hearing?

- No!
- It is up to the court whether to hold a hearing or notify the judgment debtor of the application.
- The court may grant the order ex parte.
- Question:
 - Why might you notify them?
 - Why might you not notify them?

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What is the Court Ordering in a Turnover Order?

- In a Turnover Order the court orders the judgment debtor to turn over any non-exempt property to the Constable or Sheriff.
- The Order is directed to the judgment debtor!
 - Not to the Constable or Sheriff.
 - So this is not a Writ!



Does the Order Have to Say What Property to Turn Over?

- No!
- The order does not have to identify specific property to be turned over.
 - But the property must be non-exempt.
- The court may therefore not order the judgment debtor to turn over current wages.



To Whom is
the Non-
Exempt
Property
Turned
Over?

- The court may not order the judgment debtor to turn the property over *directly* to the judgment creditor.
- The property must be turned over to the Constable or Sheriff.

What Happens if a Judgment Debtor Fails to Comply with a Turnover Order?

- Contempt proceeding!
- But a big issue here is whether the turnover order is specific enough that the judgment debtor can comply with it?
 - If the order doesn't identify any specific property, how does the debtor know what he has to turn over?
 - You can't hold someone in contempt for failure to comply with a vague order!

Fees and Costs

- There is no filing fee for a Turnover Order.
 - But the Constable or Sheriff may charge a service fee.
- Costs may be included in a Turnover Order since the judgment creditor is entitled to recover reasonable costs, including attorney's fees.

CAUSE NO. _____

PLAINTIFF

§ IN THE JUSTICE COURT
§
§
v. § PRECINCT ____
§
§

DEFENDANT

§ _____ COUNTY, TEXAS

TURNOVER ORDER

On this day the court considered Plaintiff's Application for Turnover Order pursuant to 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 this case is valid, final, and fully payable. The judgment awarded was \$ _____ together with costs in the amount of \$ _____ with interest at the rate of ____% to be compounded annually.

The court **FINDS** that the judgment remains unsatisfied and that Plaintiff is entitled to aid from this court to reach the non-exempt property of Defendant in order to obtain satisfaction of the judgment. At the time of filing this Application for Turnover Order, the total balance due on this judgment, less any credits or payments is, \$ _____.

It is therefore **ORDERED** that Defendant turn over non-exempt property that is in Defendant's possession or is subject to Defendant's control, together with all documents or records related to the property, to a designated constable or sheriff for execution.

Notwithstanding any language to the contrary, this Order does not compel turnover of the homestead, checks for current wages, or other exempt property of Defendant.

It is further **ORDERED** that _____, Constable for Precinct _____, _____ County, Texas, is hereby designated to take possession of such nonexempt property in Defendant's possession or subject to Defendant's control, together with all documents or records related to the property, for execution thereon.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
_____ COUNTY, TEXAS

TJCTC Turnover Order (Handout 1)

Knowledge Check!

- A Turnover Order:
 - A. Orders the Constable or Sheriff to seize non-exempt property of the judgment debtor and turn it over to the judgment creditor.
 - B. Orders the judgment debtor to turn over non-exempt property to a Constable or Sheriff for them to sell and pay the proceeds to the judgment creditor.

Knowledge Check!

- A Turnover Order may require a judgment debtor to turn non-exempt property over directly to the judgment creditor in order to save the Constable or Sheriff time:
 - A. True.
 - B. False.



Receivers



Appointment of a Receiver

- The alternative to issuing a turnover order is for the court to appoint a receiver.

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.

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 issuing a turnover order!
 - Why might that be the case?


Is the Court Required to Appoint a Receiver?

- No! Appointment of a receiver is within the court's discretion.
- The court is not required to appoint a receiver.
- The court may order the judgment debtor to turn over nonexempt property to a constable or sheriff instead.
 - Why might a judge prefer a turnover order to a receiver?



Where
Must the
Application
to Appoint
a Receiver
be Filed?

- Same as a request for a Turnover Order:
 - With the court that issued the judgment that is being enforced; or
 - A court in which a foreign judgment has been domesticated (rarely happens).



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.

What Must the Judgment Creditor Prove?

- As with a Turnover Order, 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.

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.

Fees and Costs

- In one case the court held that because the record contained no evidence establishing what percentage or amount constitutes a fair, reasonable or necessary fee, the trial court abused its discretion by pre-setting the receiver's fee at 25%.

Fees and Costs

- The best way to deal with this is for the court to conditionally approve a percentage fee.
- Then at the end of all the receiver's work, the receiver must provide proof to the court that the fee is reasonable based on the work performed and the results obtained.
- Then the court will either make the conditional fee final or change it accordingly to match the work performed and results obtained.

What May the Court Require of the Receiver?

- If the court appoints a receiver, the court may require the receiver:
 - To be a Texas resident;
 - To take an oath to faithfully execute their duties; and
 - To post a bond in an amount within the court's discretion.



What
Should the
Court
Authorize
the Receiver
to do?

- An order appointing a receiver should be definite, clear and precise so that the receiver has sufficient information concerning his duties and does not have to interpret the order or draw inferences or conclusions.

What
Should the
Court
Authorize
the Receiver
to do?

- The court has broad discretion concerning the **duties** of the receiver and may limit or expand the duties as the court sees fit:
 - May restrict the receiver's authority to take "cash on hand."
 - May require receiver to provide an inventory of all property taken.

Broad v. Limited Order

- Some proposed orders appointing receivers are very broad and allow the receiver to:
 - Intercept and open the debtor's mail.
 - Use force.
 - Change the locks on any location where there is non-exempt property.
 - Obtain all communication records of the debtor.
 - Order a constable to stop what they are doing and come with the receiver to seize the debtor's assets.
- These orders usually have no time limit and award fees upfront.
- See Handout 2 (broad order)

Broad v. Limited Order

- Other proposed orders appointing receivers are more limited:
 - Valid only for 120 days.
 - Receiver may seize bank accounts and other non-exempt assets.
 - No authorization to intercept and open mail, use force, change locks, obtain all electronic communication records, or commandeer a constable.
 - Only contingent award of fees.
- See Handout 3 (limited order)

Broad v. Limited Order

- At a recent workshop, there was a panel discussion among individuals involved in the collection industry, on both the creditor and debtor sides.
- The general consensus among most of the attorneys and judges involved was that the best practice generally was to adopt a more limited order rather than a broad one, especially in justice courts.

Broad v. Limited Order

- Make sure you read the order and know what's in it before signing it!
- The judge may modify a proposed order or deny it and tell the judgment creditor they may submit a more limited order for the court to consider.

CAUSE NO. _____

PLAINTIFF (JUDGMENT CREDITOR)

v. _____
DEFENDANT (JUDGMENT DEBTOR)

§ IN THE JUSTICE COURT
§
§
§ PRECINCT ____
§
§
§ _____ COUNTY, TEXAS

ORDER APPOINTING TURNOVER RECEIVER

The court has considered Plaintiff's Application for Appointment of a Turnover Receiver ("Application") 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. At the time of the Application's filing, the total balance due on the judgment—less any credits, payments, and offsets—was \$ _____.

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

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 Defendant's nonexempt property that is in Defendant's possession or is subject to Defendant's control, sell the property, and pay the proceeds to Plaintiff to the extent required to satisfy the judgment. Defendant's nonexempt property may include bank accounts, certificates of deposit, and money-market accounts held by a third party.

Receiver's Information:

Name: _____

Address: _____

Email Address: _____

Telephone Number: (____) ____-____

State Bar No. (if applicable): _____

Receiver's Additional Limited Powers: Receiver also has the following limited authority. Receiver may: (1) obtain Defendant's credit information and credit reports; (2) obtain Defendant's financial information and records from Defendant or a third party; (3) certify copies of this Order; and (4)

TJCTC Order Appointing Receiver (Handout 4)

negotiate and obtain installment payment agreements with Defendant, if Receiver reasonably believes that a payment agreement is the best option to satisfy the judgment.

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

Time Period: This Receivership terminates _____ days (*not to exceed 90 days*) after the date this Order is signed, unless extended by the court on request of Plaintiff or Receiver and on good cause shown.

Receiver's Fee, Oath, and Bond: Receiver's fee is conditionally set at 25% of the funds collected during the receivership. At the completion of Receiver's duties, Receiver must prove that such amount is reasonable based on the work performed and the results obtained and the court may reconsider and adjust the Receiver's fee for reasonableness. The court-approved fee will be taxed as costs against Defendant, and Receiver may collect that fee from Defendant in addition to the amount collected to satisfy the judgment.

(*optional*) Receiver must complete an oath to perform their duties faithfully before acting under this Order. The completed oath must be filed in _____ days.

(*optional*) Receiver must execute a good and sufficient bond in the amount of \$_____ before acting under this Order.

Receiver's Expenses: Receiver must provide 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 Defendant, and Receiver may collect those expenses from Defendant in addition to the amount collected to satisfy the judgment.

Receiver to Hold Property: Receiver must not disburse funds to Plaintiff or sell property within 14 days after serving Defendant with the Seizure Exemption Notice, the Instructions for Seizure Exemption Claim Form, and the Seizure Exemption Claim Form adopted by the Supreme Court, or within 17 days if service was by mail. After that period, Receiver may only disburse funds to Plaintiff or sell property with Defendant's written consent or a court order.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____

COUNTY, TEXAS

TJCTC Order Appointing Receiver (Handout 4)

Supreme
Court May
Issue a
Form for
Appointing
a Receiver

The Texas Supreme Court is currently considering a form for Justice Courts to use for appointment of a receiver.

It will most likely be the limited order.

We expect the form to be released for public comment by December 3.

We will keep you informed of developments.

Knowledge Check!

- If the court appoints a Receiver the best practice is:
 - A. To authorize them to intercept the debtor's mail, seize cash on hand, lock them out of any location where there is non-exempt property and allow the receiver to order a Constable to come with them so they can be sure to collect the judgment.
 - B. To use a more limited order that authorizes the receiver to obtain assets held by financial institutions but is not open ended.

Knowledge Check!

- With respect to a receiver's fees, the best practice is:
 - A. To award a fee of 25% up front so the receiver can be sure to get paid.
 - B. To award a conditional fee but require the receiver to report back to the court upon completing their work and then determine what the final fee should be based upon the work performed and results obtained.

EXEMPT

Exempt Property Hearings

What are Exempt Property Hearings?

- HB 3774 (87th Legislative Session) provides that the Supreme Court shall adopt rules by May 1, 2022 that:
 - Establish a simple and expedited procedure for a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or a receiver appointed by a court;

What are Exempt Property Hearings?

- Require a court to stay a proceeding for a reasonable period to allow the judgment debtor to assert a claim of exemption; and
- Require a court to promptly set a hearing, and stay proceedings until that hearing is held, if the judgment debtor timely asserts an exemption.

-- Govt. Code § 22.0042(a)

Notice to the Judgment Debtor

- The rules must require that a notice be provided in plain language to the judgment debtor concerning their right to assert one or more exemptions for the property sought to be seized.

-- Govt. Code § 22.0042(b)

Notice to the Judgment Debtor

- The notice must:
 - Be in English and Spanish and be written so it can be readily understood by the public and the court;
 - Include a form that the judgment debtor can use;
 - List all the exemptions under federal and state law to the seizure of personal property; and
 - Provide information for accessing free or low-cost legal assistance.

-- Govt. Code § 22.0042(b)

Form for the Judgment Debtor to Submit to the Court

- A form must be created that is written in English and Spanish in plain language that can be readily understood by the public and the court and includes instructions for the use of the form.
- A court must accept the form unless it has been completed in a manner that causes a substantive defect that cannot be cured.

-- Govt. Code § 24.0042(c) and (d)

Status of the New Rules and Form

- The Texas Supreme Court is currently preparing:
 - The new rules to give a judgment debtor notice of their right to claim a property exemption;
 - The form that the judgment debtor may submit; and
 - The procedures for the court to stay enforcement of the judgment and decide whether the property is exempt.

Status of the New Rules and Form

- We expect the new rules and form to be released for public comment by December 3, 2021.
- We will keep you informed of any developments.

Additional Resources

Civil Deskbook (3d ed. Oct. 2021)
at pages 142 – 148.

Legal Board: search for turnover,
receiver, exempt!

Forms:

<https://www.tjctc.org/tjctc-resources/forms/Small-Claims.html>



Questions?



CASE CLOSED

THANK YOU!