Sheriffs' Association of Texas

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CIVIL PROCESS MANUAL

SHERIFFS' ASSOCIATION OF TEXAS

Civil Process Manual

This Civil Process Manual was assembled by the late Tom W. Bullington, SAT Legal/ Technical Advisor and John Steinsiek, Civil Process consultant to the Sheriffs' Association of Texas. It is made up of Statutes, Rules, Case law, and Attorney General Opinions.
The Sheriffs' Association of Texas assumes no liability for the use of this material.
Each person, depending on the information set out in this manual, should check with his/her District or County Attorney to verify that the information set out in this manual is correct and current.
From time to time, it will become necessary to add additional subject matter to this manual. If you print the manual and work from the paper copy you should check the web pages to make sure the printed version is still current. After the Legislature meets it may be necessary to update this manual.
If you have questions, please contact John Steinsiek, at johnsteinsiek@gmail.com or at 1-817-366-6835.

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CIVIL PROCESS

The purpose of this manual is to help identify those civil processes and the requirements set out in laws, codes and rules that govern there service or execution. Attorney General options may act as guidelines to clear up complex issues.
The manual is designed to help Sheriffs and their deputies carry out the duties assigned to them in the status.
The Texas Commission on Law Enforcement licenses academies, contract training agreements and sets guide lines for course content as well as licensing of the instructors. Some training courses are offered on line. You may wish to obtain a Civil Process Proficiency Certificate. Contact the Commission at **1-512-936-7700** or their website, **www.tcleose.state.tx.us**, for further information.

CONCEPT

The civil law suit belongs to the plaintiff (the person filing the suit). It is his responsibility to file his case correctly and follow through with any additional documents that may need to be issues and served or executed to proceed to trial. Once a judgment has been issued by the court, it will be the party awarded the judgment duty to have the correct documents issued to enforce the terms of the judgment. It is the officer's duty to serve or execute these documents. When a document is not obeyed it will be the plaintiff or his attorney who files for additional enforcement documents, if they choose to spend additional funds.

GENERAL COMMENTS

It should be remembered that before you become involved in serving civil papers several things must happen. (1) The individual or his attorney must file a suit (a petition stating the grounds for the suit). (2) The court must issue a citation or appropriate civil process addressed to the defendant. (3) The citation or other appropriate civil process must be delivered to the defendant by the sheriff, constable or other person as designated by the rules of civil procedure. The delivery and or execution of civil process is important duties assigned to the sheriffs and constables by law. Because there can be liability for the sheriff, Constables, the deputy and the county it requires study and training in the civil codes, rules and laws. The officer cannot assume his criminal law back ground has prepared him for the liabilities he will encounter in his duties delivering civil process or the execution of the civil writs. The civil process requires knowledge, hard work and dedication. This is not a beginner's job or a place for someone who can't perform other tasks.

More than one person in the office should know how to carry out these duties. Service of citations, writs, executions and other processes should be done in a courteous, professional and polite manner.
If the person being served asks about the document, a brief statement about the type of document and the required response to the court or in case of a writ what action must be taken. Then refer them to the state or local bar association to receive a referral to a competent attorney in that field of law.

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If you are faced with Writ or document you know nothing about Black's Law Dictionary is a good place to start. You may also ask other civil professionals or contact a civil instructor from classes you have taken. Your County, District or Criminal District Attorney maybe able to assist you. Many of them were elected as criminal attorneys. It is recommended if you have time research the matter and send your research to your attorney. This will help him understand your concerns.

It is the duty of the County Attorney, District Attorney or the Criminal District Attorney (Legal advisor) to provide legal opinions and advice, in writing if requested, to the sheriff when there are questions concerning their official duties of office. (41.007 - Government Code) If there is any question or concern in serving a particular civil process the sheriff or deputy should contact their legal advisor for direction and clarification as how to proceed. The Supreme Court said the officers should know the law like a surgeon knows anatomy. Training and constant study will help protect you, your department and the county from the liability issues involved in civil process.
In the event of a law suit against the sheriff/deputy, the sheriff should immediately contact his county or district attorney and give him the papers. The legal advisor will be representing the sheriff and/or his deputies in most instances. (157.901 - Local Government Code). Don't be surprised if the first motion is to have the county removed from the suit.

LIABILITY OF SHERIFF/DEPUTY

Loc. Gov. Code Sec. 85.021. EXECUTION OF PROCESS; PENALTY.

(a) The sheriff shall execute all process and precepts directed to the sheriff by legal authority and shall return the process or precept to the proper court on or before the date the process or precept is returnable.

(b) The sheriff commits an offense if the sheriff:

(1) fails to return a process or precept as required by Subsection (a); or

(2) makes a false return.

(c) An offense under this section is punishable by the court to which the process is returnable, as for contempt, by a fine of not more than $100. A fine collected under this section shall be deposited in the county treasury.

(d) The sheriff is liable for all damages sustained by a person by reason of an offense committed by the sheriff under this section.

Sec. 85.022. EXECUTION OF LEGISLATIVE PROCESS; PENALTY.

(a) The sheriff shall execute subpoenas and other process directed to the sheriff that are issued by the speaker of the house of representatives, the president of the senate, or the chairman of a committee of either house of the legislature.

(b) Failure to execute the subpoena or other process under Subsection (a) carries the same penalties as failure to execute process issued by a court.

(c) If the sheriff performs services under this section, the sheriff shall receive the fees prescribed by law for similar services rendered in the courts. The fee shall be paid on the certificate of the authority issuing the process.

Constable Duty To Serve (Loc. Gov. Code Sec. 86.021)

CIVIL PRACTICE & REMEDIES CODE

7.001 - Liability for Refusal or Neglect in Performance of Official Duties

*(a) A clerk, **sheriff,** or other officer who neglects or refuses to perform a duty required under the Texas Rules of Civil Procedure or under a provision of this code derived from those derived from those rules is liable for actual damages only in a suit brought by a person injured by the officer's neglect or refusal.*
(b) The officer may be punished for contempt of court for neglect or refusal in performance of those duties. The court shall set the fine at not less than $10 or more than $100, with costs. The officer must be given 10 days' notice of the motion.
(c) This section does not create a cause of action for an action that can otherwise be brought under Chapter 34. A party may seek actual damages under this section or chapter 34, or the party may seek contempt sanctions, <u>but the may not seek both damages and contempt</u>
(d) An action or motion brought under thus section must comply with and is subject to the provisions in Sections 34.068, 34.069, 34.070,and 34.074, except that a motion brought under Subsection (b) need not comply with section 34.068(b)
(Effective September 1, 2007)

7.002 - Liability for Deposits Pending Suit <u>(Pre Judgment Writs)</u>

(a) An officer who has custody of a sum of money, a debt, an instrument, or other property paid to or deposited with a court pending the outcome of a cause of action shall seal the property in a secure package in a safe or bank vault that is accessible and subject to the control of the court.
(b) The officer shall keep in his office as part of his records an itemized inventory of property deposited with the court. The inventory must list the disposition of the property and the account for which the property was received.
(c) At the expiration of the officer's term, the office shall transfer all deposited property and the inventory to the officer's successor in office. The successor shall give a receipt for the transferred property and the inventory.
(d) This section does not exempt an officer or the officer's surety from liability on the officer's bond due to neglect or other default in regard to the deposited property.

Note a bond is not insurance. If they bond pays they will file suit to recover the money and legal cost from the Sheriff, the officer or the county in some cases.

7.003 - Liability Regarding Execution of Writs
(a) Except a provided by Section 34.061, an officer is not liable for damages resulting from the execution of a writ issued by a court of this state if the officer in good faith executes the writ *or attempts to execute the writ* as provided by law and by the Texas Rules of Civil Procedures.
(b) An officer shall execute a writ issued by a court of this state without requiring that bond be posted for the indemnification of the officer.
(c) An officer shows that the officer acted in good faith when the officer shows that a reasonably prudent officer, under the same or similar circumstances, could have believed that the officer's conduct was justified based on the information the officer processed when the conduct occurred.

Note-You should view this from the perspective of what any reasonable and prudent person would have done under the same conditions. Do not assume any civil process and seizures are done the same way all of the time. Each case has circumstances that may require the officer to adjust his procedures.

7.021 - Suit on Official Bonds
Suit may be brought in the name of this state alone on an official bond for the benefit of all the parties entitled to recover on the bond if:
1. The bond is made payable to this state or to an officer of this state; and
2. A recovery on the bond is authorized by or would inure to the benefit of parties other than this state.

It is mandated by statute that the sheriff shall execute all process and precepts directed to the sheriff by legal authority and shall return the process or precept to the proper court on or before the date the process or precept is returnable. The writ must be served and returned promptly. **(This does not mean that the sheriff is the only person that can serve civil Process. In civil process service by a deputy is under the authority of the sheriff. The deputy in ascents is acting as the sheriff. The Sheriff/Deputy commits an offense if the Sheriff/Deputy fails to return a process or precept or makes a false return and is subject to a fine of not more than $100).**
The sheriff is mandated by statute to execute subpoenas and other process directed to the sheriff that are issued by the speaker of the House of Representatives, the president of the senate, or the chairman of a committee of either house of the legislature. **Failure to execute the subpoena or other process carries the same penalties as failure to execute process issued by the court. (85.022, Local Government Code)**
Failure to execute all process and precepts received by the sheriff, in a timely manor, may lead to removal from office. (87.011 Local Government Code)
It should be remembered that when a sheriff appoints a deputy or a reserved deputy sheriff that the sheriff is **responsible for the official acts of his deputy.** Thus when a sheriff

appoints a deputy to serve civil process, the sheriff is responsible for any mistakes or omissions made by the deputy. (85.03 (d), Local Government Code)
It is important that the sheriff/deputies that will be charged with the responsibility of serving civil process attend training seminars annually on civil process, on a regular basis, in order to upgrade their skills and knowledge.
In order to be proficient as a civil process server you must know what the statutes, case law, rules and attorney general opinions say about the subject matter. Attorney General Opinions may be found on the internet at www.oag.state.tx.us.
You cannot effectively carry out these duties without having access to the statutes, case law, rules, and attorney general opinions.
LexisNexis "Civil Process for Texas" is a good reference book for sheriff, constable and their deputies.
It is suggested that you have the following paper bound statutes, codes and rules, be immediately accessible. in order to be more efficient in carrying out your duties. These books could be purchased by the sheriff through the funds allocated for training. Most are available in an electronic formats. Most are also available at TexasStatutes.com
1. Texas Local Government Code
2. Texas Property Code
3. Texas Civil Practice and Remedies Code
4. Texas Rules of the Court
5. Texas Juris 3d, Vol. 59 - Police, Sheriff, and Constables
6. Access to the Black Law Dictionary and Southwestern reporter, (County law library. See your legal advisor)
It is important that you know all of the rules and how to apply them. Once you have become comfortable with understanding the rules you will find that when ever a situation arises in performing the duties you will have more confidence in what you do. Remember you must follow the rules and codes regardless of what the plaintiff's or defendant's attorney thinks you should do. The attorney cannot give permission to violate a rule or code. It is suggested that if you contact your county/district attorney you supply him with the code or rule numbers that relate to your questions. This may save him research time when responding to you.
When you receive a writ of execution once demand has been made the writ may not be returned until you ask the plaintiff or his attorney to point out any non exempt property belonging to the defendant in your county (CPRC 34.072). You should call the attorney or the plaintiff and ask if they can point out any non-exempt property belonging to the defendant in your county. Also follow up the call with a written request with a time limit for the response of 7 to 10 days. If no property is pointed out the writ may be return to the issuing court.

The Commission on Law Enforcement will allow training credit for Civil Process class conducted by academies and contract trainers with approved civil process criteria.
If there is an error or code appears to have not been followed in a document you may ask the court for clarification. When discussing an issue with a court or attorney have the code or legal reference available.

CIVIL PROCESS GLOSSARY

The following are the most common terms used in civil process and definitions of Writs

and enforcement document as set out in The Commission on Law Enforcement curriculum:

ALTERNATIVE SERVICE A METHOD OF DELIVERING TO AN UNCOOPERATIVE DEFENDANT.
ANSWER A DEFENDANT'S WRITTEN REPLY TO A PLAINTIFF'S PETITION.
APPLICANT A PARTY MAKING APPLICATION TO THE COURT OR PETITIONING THE COURT FOR SOME ACTION.
BENCH WARRANT & CAPIAS A WRIT ISSUED TO AN OFFICER COMMANDING THAT SPECIFIC PERSON BE TAKEN INTO CUSTODY AND BROUGHT BEFORE THE COURT IMMEDIATELY OR AT A SPECIFIC TIME AND PLACE. BENCH WARRANT IS ISSUED BY AND SIGNED BY A JUDGE. CAPIAS IS IN MOTION FORM AND ISSUED BY A CLERK OF THE COMPETENT COURT.
CITATION AN OFFICIAL NOTICE FROM A COURT OF COMPETENT JURISDICTION, ISSUED TO A DEFENDANT AFTER A PLAINTIFF'S PETITION IS FILED; THE CITATION COMMANDS THE DEFENDANT TO ANSWER & APPEAR IN COURT AT A SPECIFIC TIME.
CONTEMPT PROCEEDINGS HELD TO DETERMINE WHETHER A PERSON HAS VIOLATED A LAWFUL COURT ORDER AND TO SET PUNISHMENT IF VIOLATION IS FOUND. WHERE AN OFFICER REFUSES TO CARRY OUT LAWFULLY IMPOSED DUTIES, REFUSAL IS PUNISHABLE AS A CONTEMPT.
DEFAULT JUDGMENT THE FAILURE TO PERFORM SOME ACTION REQUIRED BY LAW WITHIN THE SPECIFIED TIME. IN A CIVIL LAWSUIT, JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST A PARTY WHO HAS FAILED TO ANSWER OR APPEAR AS DIRECTED.
DILIGENCE EFFORT PERSISTENT ACTIVITY, PRUDENCE OR CARE; "DILIGENT EFFORT" IS THAT WHICH IS PROPERLY EXPECTED FROM A REASONABLE AND PRUDENT PERSON UNDER THE PARTICULAR CIRCUMSTANCES.
INSTANTER IMMEDIATE, NOW OR INSTANTLY.
JUDGMENT THE FINAL ORDER OF A COURT IN A CIVIL SUIT WHICH SETTLES ALL DISPUTED

ISSUES, DETERMINES THE RIGHTS OF THE PARTIES WITH REGARDS TO THE SUBJECT MATTER OF THE SUIT, AND WHICH IS SUBJECT TO BEING ENFORCED BY A WRIT.

JURISDICTION THE POWER OF A COURT TO LAWFULLY ACT WITH REGARD TO PERSONS AND PROPERTY.

ORDERS (ALSO KNOWN AS WRITS) THE DIRECTIONS OF A COURT OR JUDGE: A MANDATE OR COMMAND.

PETITION A DOCUMENT FILED BY THE PLAINTIFF WITH THE CLERK OF THE COURT WHICH OUTLINES THE BASIS OF THE COMPLAINT AGAINST THE DEFENDANT AND THE RELIEF BEING SOUGHT FROM THE COURT.

PLAINTIFF A PARTY IN A CIVIL SUIT, MAINLY THE ONE WHO INITIATES THE SUIT BY FILING A PETITION.

PROCESS ALL WRITS AND OFFICIAL DOCUMENTS ISSUED BY COURTS IN CONNECTION WITH PENDING SUITS.

RESPONDENT ALSO KNOWN AS THE DEFENDANT.

RETURN THE ENDORSEMENT MADE BY A SHERIFF OR CONSTABLE UPON PROCESS. WRIT OR NOTICE STATING WHAT HAS BEEN ACCOMPLISHED, AND THE TIME AND MODE OF SERVICE.

SERVICE THE DELIVERY OF A WRIT, NOTICE, INJUNCTION, ETC. BY AN AUTHORIZED PERSON, TO A PERSON WHO IS THEREBY OFFICIALLY NOTIFIED OF SOME PROCEEDING CONCERNING HIM.

SHOW CAUSE A NOTICE TO THE DEFENDANT TO EITHER APPEAR IN COURT OR PREPARE A WRITTEN ANSWER TO SHOW CAUSE FOR FAILING TO RESPOND TO A PREVIOUS ORDER OF THE COURT. MAY ALSO BE KNOWN AS A NOTICE.

STYLE OR FORMAT THE PRESCRIBED STRUCTURE FOR THE CLERKS OF THE COURT TO USE IN DEVELOPING THE PROCESS.

WRIT EXAMPLES OF WRITS: EXECUTION, POSSESSION, GARNISHMENT, SEQUESTRATION, ATTACHMENT, INJUNCTION, ETC.

LATIN TERMS

ET AL AND ALL OTHERS

EX PARTE ANY PROCEEDING WHICH IS HELD FOR THE BENEFIT OF, OR ON APPLICATION OF, ONLY ONE PARTY, IN THE ABSENCE OF ONE PARTY.
IN RE IN THE INTEREST OF
NULA BONA NO GOODS OR NO FUNDS
PRO BONO NO FEE, USUALLY WORK PROVIDED BY ATTORNEY AT NO COST.
PRO SE REPRESENTING ONES SELF IN AN ACTION

DEFINITIONS OF WRITS AND ENFORCEMENT DOCUMENTS

ABSTRACT OF JUDGMENT A COMPLETE HISTORY IN SHORT, ABBREVIATED FROM OF THE CASE AS FOUND IN THE RECORD, WHICH WHEN FILED WITH THE COUNTY CLERK CREATES A JUDGMENT LIEN OR REAL ESTATE OF THE DEFENDANT.
ATTACHMENT A PROCEDURE OR WRIT WHICH MAY BE USED TO BRING A PERSON OR PROPERTY INTO THE CUSTODY OF THE COURT.
CONTEMPT OF COURT PROCEEDINGS HELD TO DETERMINE WHETHER A PERSON HAS VIOLATED A LAWFUL COURT ORDER AND TO SET PUNISHMENT IF VIOLATION IS FOUND.
WHERE AN OFFICER REFUSES TO CARRY OUT LAWFULLY IMPOSED DUTIES, REFUSAL IS PUNISHABLE AS CONTEMPT.
DISTRESS WARRANT A WRIT ISSUED BY A JP COURT DIRECTING THE SEIZURE OF A TENANT'S PROPERTY FOR FAILURE TO PAY RENT AS DUE**.**
EXECUTION A PROCESS AND WRIT ISSUED BY A COURT
ORDER OF SALE TO ENFORCE AND COLLECT MONEY UPON DEMAND ON A JUDGMENT BY THE SEIZURE AND SALE OF NON-EXEMPT PROPERTY.
GARNISHMENT A WRIT AND PROCESS DIRECTED TO ONE WHO HAS MONEY OR PROPERTY IN HIS POSSESSION BELONGING TO THE DEFENDANT, ORDERING SUCH THIRD PERSON NOT TO DELIVER OR PAY IT TO THE DEFENDANT BUT TO DELIVER OR HOLD IT FOR PLAINTIFF OR AS DIRECTED BY THE COURT.
INJUNCTION A WRIT ISSUED BY A COURT WHICH DEMANDS OR PROHIBITS SPECIFIED ACTIONS.
POSSESSION A WRIT EMPLOYED TO ENFORCE A JUDG**NOT IN THE EVICTION** MENT TO RECOVER POSSESSION OF REAL

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PROCESS OR PERSONAL PROPERTY.
REENTRY THE ACT BY MEANS OF A WRIT RETURNING THE POSSESSION OF LAND OR TENEMENTS (RENTAL PROPERTY) TO THE TENANT AFTER A LANDLORD HAS WRONGLY LOCKED THE TENANT OUT OF THE PREMISES.
RESTRAINING ORDER AN ORDER TO THE DEFENDANT(S) PROHIBITING HIM FROM DOING AN ACT PROHIBITED IN THE ORDER UNTIL A FORMAL HEARING CAN BE CONDUCTED.
SEQUESTRATION AN ORDER DIRECTING THE SHERIFF OR CONSTABLE TO TAKE INTO HIS POSSESSION CERTAIN PROPERTY OF WHICH ANOTHER PERSON HAS POSSESSION UNTIL THE SUIT CAN BE DECIDED OR AS THE COURT DIRECTS.

CHAPTER 1
HOMESTEAD
PROPERTY EXEMPT FROM CREDITORS CLAIMS

TEXAS PROPERTY CODE
41.001 - Interest in Land Exempt from Seizure
(a) homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claim of creditors except for encumbrances properly fixed on homestead property.
(b) Encumbrances may be properly fixed on homestead property for:
1. Purchase money;
2. Taxes on the property;
3. Work and material used in constructing improvements on the property if contracted for in writing as provided by Sect ions 53.254 (a)(b) and (c);
4. An owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition. Including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding; or
5. The refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses if the homestead is a family homestead, or from the tax debt of the owner.
6. An extension of credit that meets the requirements of Section 50(a)(6), Article XVI, Texas Constitution.
7. A reverse mortgage that meets the requirements of Sections 50(k)-(p), Article XVI, Texas Constitution.
(c) The homestead claimant's proceeds of a sale of a homestead are not subject to seizure

for a creditor's claim for six months after the date of sale.

41.002 - Definition of Homestead

(a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.

(b) If used for the purposes of a **rural** home, the homestead shall consist of:

1. For a **famil**y, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or
2. For a **single, adult person**, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

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

1. Located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and
2. 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:

A. Electric;
B. Natural gas;
C. Sewer;
D. Storm sewer; and
E. Water

(d) The definition of a homestead as provided in this section applies to all homesteads in this state when ever created.

41.003 - Temporary Renting of a Homestead

Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.

41.004 - Abandonment of a Homestead

If a homestead claimant is married, a homestead cannot be abandoned without the consent of the claimant's spouse.

41.005 - Voluntary Designation of Homestead

(a) If a rural homestead of a family is part of one or more parcels containing a total of more than 200 acres, the head of the family and, if married, that person's spouse may voluntarily designate not more than 200 acres of the property as the homestead. If a rural homestead of a single adult person, not otherwise entitled to a homestead, is part of one or more parcels containing a total of more than 100 acres, the person may voluntarily designate not more than 100 acres of the property as the homestead.

(b) If an urban homestead of a family, or an urban homestead of a single adult person not otherwise entitled to a homestead is part of one or more contiguous lots containing a total of more than 10 acres, the head of the family and, if married, that person's spouse or the single adult person, as applicable, may voluntarily designate not more than 10 acres of the

property as the homestead.
(c) Except as provided by Subsection (e) or Sub-chapter B, to designate property as a homestead, a person or persons, as applicable, must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person or persons must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:
(1) a description sufficient to identify the property designated;
(2) a statement by the person or persons who executed the instrument that the property is designated as a homestead of the person's family or as the homestead of a single adult person and not otherwise entitled to a homestead;
(3) the name of the current record titleholder of the property; and
(4) for a rural homestead, the number of acres designated and, if there is more than one survey the number of acres in each.
(d) a person or persons, as applicable may change the boundaries of a homestead designated under Sub-section (c) by executing and recording an instrument in the manner required for a voluntary designation under this subsection. A change under this subsection does not impair rights acquired by a party before the change.
(e) Except as otherwise provided by this subsection, property on which a person receives an exemption from taxation under Section 11.43, Tax Code, is considered to have been designated as the person's homestead for the purposes of this subchapter if the property is listed as the person's residence homestead on the most recent appraisal roll for the appraisal district established for the county in which the property is located. If a person designates property as a homestead under Subsection (c) or Subchapter B and a different property is considered to have been designated as the person's homestead under this subsection, the designation under Subsection (c) or Subchapter B, as applicable, prevails for purposes of this chapter.
***Note**: Application for Homestead Tax Exemption now required proof the person Is living in the home and has no other homestead in this or any other state.*
(f) If a person or persons, as applicable, have not made a voluntary designation of a homestead under this section as of the time a writ of execution is issued against the person, any designation of the person's or persons' homestead must be made in accordance with Subchapter B.
(g) An instrument that made a voluntary designation of a homestead in accordance with prior law and that is on file with the county clerk on September 1, 1987, is considered a voluntary designation of a homestead under this section.

41.008 - Conflict with Federal Law

To the extent of any conflict between this subchapter and any federal law that imposes an upper limit on the amount, including the monetary amount or acreage amount, of homestead property a person may exempt from seizure, this subchapter prevails to the extent allowed under

federal law.

DESIGNATION OF A HOMESTEAD
IN AID OF ENFORCEMENT OF A JUDGMENT DEBT

41.021 - Notice to Designate

If an execution is issued against a holder of an interest in land of which a homestead may be a part and the judgment debtor has not made a voluntary designation of a homestead under Section 41.005, the judgment creditor may give the judgment debtor notice to designate the homestead as defined in Section 41.002. The notice shall state that if the judgment debtor fails to designate the homestead within the time allowed by Section 41.022, the court will appoint a commissioner to make the designation at the expense of the judgment debtor.

41.022 - Designation by Homestead Claimant (Excerpt)

At any time before 10 a.m. on the Monday next after the expiration of 20 days after the date of service of the notice to designate, the judgment debtor may designate the homestead as defined in Section 41.002 by filing a written designation, signed by the judgment debtor, with the justice or clerk of the court from which the writ of execution was issued, together with a plat of the area designated.

41.023 - Designation by Commissioner

(a) If a judgment debtor who has not make a voluntary designation of a homestead under Section 41.005 does not designate a homestead as provided in Section 41.022, on motion of the judgment creditor, filed within 90 days after the issuance of the writ of execution, the court from which the writ of execution issued shall appoint a commissioner to designate the judgment debtor's homestead. - - - - - (b) & (c) - - - -

41.024 - Sale of Excess

An officer holding an execution sale of property of a judgment debtor whose homestead had been designated under this chapter may sell the excess of the judgment debtor's interest in land not included in the homestead.

Summary-Officer executing a property seizure

If defendant has more land than allowed by the homestead and voluntarily designates the homestead interest you may proceed to seize the land that is not designated as the homestead.

If defendant has more land than allowed by the homestead and refuses to voluntarily designate the homestead interest you should make your return that you are unable to determine what property is not the homestead subject to execution. Plaintiff's attorney may go to the court that issued the writ and ask the court to proceed under Section 41.021, 41.022, 41.023 and 41.024 Texas Property Code and ask the court:

1. To issue a notice to the holder of the land to designate the homestead interest, and if there is no designation of the homestead by the holder of the land the court will appoint a commissioner to make the designation at defendants (judgment debtors) expense.
2. The defendant (judgment debtor) at any time before10 am the Monday next after the expiration of 20 days after the date of service of the notice to designate, the defendant may designate

the homestead as defined in 41.002 Texas Property Coded by filing a written designation, signed by the defendant, with the justice or clerk of the court from which the writ of execution was issued, together with a plat of the area designated.
3. If defendant (judgment debtor) who has not made a voluntary designation of a homestead under Section 41.005 or does not designate a homestead as provided in Section 41.022, on motion by the judgment creditor, filed within 90 days after the issuance of the writ of execution, the court from which the writ execution issued shall appoint a commissioner to designate the judgment debtor's (defendant's) homestead.
4. Officer (Process Server) holding an execution sale of property of a judgment debtor (defendant) whose homestead has been designated under this chapter may sell the excess of land not included in the homestead.

EXAMPLES

1. The temporary renting of a homestead does not change the character of the homestead and any rents that are derived therefrom are not protected by the homestead law and are subject to seizure. Texas Commerce Bank Irving v. McCreary, 677 SW 2d 643.
2. Growing crops are protected by the homestead exemption from seizure. After crops are harvested they no longer enjoy the protection of the homestead exemption and are subject to execution. McIntyre v. Oliver Motor Co., 20 SW2d 241.
3. Oil, gas, and other minerals are considered a part of the land and thus exempted from seizure. Once oil, gas or other minerals are taken from the land they loose their protection of the homestead exemption and are subject to seizure. 43 Tex. Juris 3rd 405.
4. If homestead property is destroyed and there is insurance on this property the proceeds are not subject to seizure until 6 months after the owner had the right to claim the insurance proceeds, unless the lien-holder's claim rest on a contractual basis. Home Improvement Loan Co. v. James Brewer, et ux, 318 SW2d 673.
5. A person claiming homestead rights in property pursuant to Tex. Const. Art. XVI Sec. 50 has the burden of proving both overt acts of homestead usage and intent to claim the land as a homestead. First Gibraltar Bank, FSB v. Morales, 115 S. Ct. 204.
6. Homeowners are subject to liens to secure the payment of maintenance assessments provided for in the subdivision's declaration of covenants and restrictions, and an order of foreclosure to collect the sums due would have been proper, where the restrictions were placed on the land before it became the homestead of the parties(the liens having been contracted for several years before the homeowners took possession of their houses), and where the restrictions contained valid contractual liens which ran with the land. Inwood North Homeowners' Asso. V Harris, 736 SW2d 632.
7. Where a bankrupt homeowner sought to exempt both his homestead and the proceeds from the sale of his former homestead under Property Code Sec. 41.001, the proceeds the homeowner received was not entitled to take both exemptions simultaneously because the former homestead loses its homestead character when

the owner abandons it by acquiring another homestead and therefore the proceeds from the former homestead are no longer exempt. Re England, 975 F2d 1168.

CHAPTER 2
PERSONAL PROPERTY EXEMPTIONS

TEXAS PROPERTY CODE

42.001 - Personal Property Exemption

(a) Personal property, as described in Section 42.002, is exempt from garnishment attachment, execution or other seizure if:

(1) the property is provided for a family and has an aggregate fair market value of not more than $60,000, exclusive of the amount of any liens security interests or other charges encumbering the property; or

(2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than $30,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.

(b) The following personal property is exempt from seizure and is not included in the aggregate limitations prescribed by Subsection (a):

(1) current wages for personal services, except for the enforcement of court-ordered child support payments;

(2) professionally prescribed health aids of a debtor or a dependent of a debtor;

(3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor;

and

(4) a religious bible or other book containing sacred writings of a religion that is seized by a creditor other than a lessor of real property who is exercising the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for or abandons the real property.

(c) Except as provided by Subsection (b)(4) this section does not prevent seizure by a secured creditor with a contractual landlord's lien or other security in the property to be seized.

(d) Unpaid commissions for personal services not to exceed 25 percent of the aggregate limitations prescribed by Subsection (a) are exempt from seizure and are included in the aggregate.

(e) A religious bible or other book described by Subsection (b)(4) that is seized by a lessor of real

property in the exercise of the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for the real property or abandons the real property may not be included in the aggregate limitations prescribed by Subsection (a).

42.002 - Personal Property (Family $100,000.00, Single Adult $50,000.00)

(a) The following personal property is exempt under Section 42.001(a):

1. Home furnishings, including family heirlooms;
2. Provisions for consumption;
3. Farming or ranching vehicles and implements;
4. Tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
5. Wearing apparel;

6. Jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);
7. Two firearms;
8. Athletic and sporting equipment, including bicycles;
9. A two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of the family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person.
10. The following animals and forage on hand for their consumption:
A. Two horses, mules, or donkeys and a saddle, blanket, and bridle for each;
B. 12 head of cattle;
C. 60 head of other types of livestock; and
D. 120 fowl and
11. Household pets
(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code, or Subchapter F, Chapter 501, Transportation Code,[1] or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.

42.0021 - Additional Exemption for Certain Savings Plans

(a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, annuity, deferred compensation, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, or a simplified employee pension plan, an individual retirement account or individual retirement annuity, including and inherited individual retirement account or individual retirement annuity, or a health savings account, and under any annuity or similar contract purchased with assets distributed from that type of plan or account, is exempt from attachment, execution or seizure for the satisfaction of debts to the extent the plan, contract, annuity, or account is exempt from federal income tax. Or to the extent federal income tax on the person's interest is deferred until actual payment of the benefits to the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A, 457(b), or 501(a), Internal Revenue Code of 1986, [1] including a government plan or church plan described by Section 414(d) or (3), IRS Code 1986.[2] For the purpose of this subsection, the interest of a person in a plan, annuity, account, or contract acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coannuitant, heir, or legatee, is exempt to the same extent that the interest of the person from whom the plan, annuity, account, or contract was acquired was exempt on the date of the person's death. If this subsection is held invalid or preempted by federal law in whole or in part or in certain circumstances, the subsection remains in effect in all other respects to the maximum extent permitted by law.

(b) Contributions to an individual retirement account, other than contributions to a Roth IRA described in Section 408A, Internal Revenue Code of 1986, or annuity that exceed the amounts deductible under the applicable provisions of the Internal Revenue Code of 1986 and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law. Amounts qualifying as nontaxable rollover contributions under Section

402(a)(5), 403(a)(4), 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts treated as qualified rollover contributions under Section 408A, Internal revenue code of 1986, are treated as exempt amounts under Subsection (a). In addition, amounts qualifying as nontaxable rollover contributions under Section 402(c), 402(e)(6),402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10),408(d)(3), or 408A of the Internal Revenue Code of 1986[3] on or after January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts qualifying as nontaxable rollover contributions under Section 223(f)(5) of the Internal Revenue Code of 1986 on or after January 1, 2004, are treated as exempt amounts under Subsection (a).

(c) Amounts distributed from a plan, *annuity, account,* or contract entitled to the exemption under Subsection (a) are not subject to seizure for a creditor's claim for 60 days after the date of distribution if the amounts qualify as a nontaxable rollover contribution under Subsection (b).

(d) A participant or beneficiary of a plan, annuity, account, or contract entitled to an exemption under Subsection (a), other than an individual retirement account or individual retirement annuity, is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the exempt plan, annuity, or contract to secure a loan to the participant or beneficiary from the exempt plan, annuity, account, or contract, and the right to the assets held in or to receive payments from the plan, annuity, account, or contract is subject to attachment, execution and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

(e) If Subsection (a) is declared invalid or preempted by federal law, in whole or in part or in certain circumstances, as applied to a person who has not brought a proceeding under Title ll, United States Code, the subsection remains in effect, to the maximum extend permitted by law, as to any person who has filed that type of proceeding.

(f) A reference in this section to a specific provision of the Internal Revenue Code of 1986 includes a subsequent amendment of the substance of that provision.

42.0022 - Exemption for College Savings Plan

(a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or receive payments or benefits under any of the following is exempt from attachment, execution and seizure for the satisfaction of debts:

(1) any fund or plan established under Subchapter F, Chapter 54, Education Code, including the person's interest in a prepaid tuition contract;

(2) any fund or plan established under Subchapter G, Chapter 54, Education Code, including the person's interest in a saving trust account; or

(3) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986, as amended.

(b) If any portion of this section is held to be invalid or preempted by federal law in whole or in part or in certain circumstances, this section remains in effect in all other respects to the maximum extent permitted by law.

42.003 - Designation of Exempt Property

(a*) <u>If the number or amount of a type of personal property</u>* owned by a debtor exceeds the exemption allowed by Section 42.002 and the debtor can be found in the county where the property is located, the officer making a levy on the property shall ask the debtor to designate the personal property to be levied on. If the debtor cannot be found in the county or the debtor fails

to make a designation within a reasonable time after the officer's request, the officer shall make the designation.
(b) If the aggregate value of a debtor's personal property exceeds the amount exempt from seizure under Section 42.001(a), the debtor may designate the portion of the property to be levied on. If, after a court's request, the debtor fails to make a designation within a reasonable time or if for any reason a creditor contests that the property is exempt, the court shall make the designation.

42.004 - Transfer of Nonexempt Property

(a) If a person uses the property not exempt under this chapter to acquire, obtain an interest in, make improvements to, or pay an indebtedness on personal property which would be exempt under this chapter with the intent to defraud, delay, or hinder an interested person from obtaining that to which the interested person is or may be entitled, the property, interest, or improvement acquired is not exempt from seizure for the satisfaction of liabilities. If the property, interest, or improvement is acquired by discharging an encumbrance held by a third person, a person defrauded, delayed, or hindered is subrogated to the rights of the third person.
(b) A creditor may not assert a claim under this section more than two years after the transaction from which the claim arises. A person with a claim that is unliquidated or contingent at the time of the transaction may not assert a claim under this section more than one year after the claim is reduced to judgment.
(c) It is a defense to a claim under this section that the transfer was made in the ordinary course of business by the person making the transfer.

42.005 - Child Support Liens

Sections 42.001, 42.002, and 42.0021 of the code do not apply to a child support lien established under Subchapter G, Chapter 157, Family Code.

43.001 - Exempt Public Library Property

A public library is exempt from attachment, execution and forced sale.

43.002 - Exempt Property - State

The real property of the state, including the real property held in the name of state agencies and funds, and the real property of a political subdivision of the state are exempt from attachment, execution and forced sale. A judgment lien or abstract of judgment may not be filed or perfected against the state, a unit of state government, or a political subdivision of the state on property owned by the state, a unit of state government, or a political subdivision of the state; any such judgment lien or abstract of judgment is void and unenforceable.

44.001 - Definition - (Taxation of Retirement Benefits by Another State)

In this chapter, "pension or other retirement plan" includes:
1. An annuity, pension, or profit-sharing or stock bonus or similar plane established to provide retirement benefit for an officer or employee of a public or private employer or for a self-employed individual:
2. An annuity, pension, or military retirement pay plan or other retirement plan administered by the United States: and
3. An individual retirement account.

44.002 - Property Exempt

All property in this state is exempt from attachment, execution, and seizure for the satisfaction of a judgment or claim in favor of another state or political sub-division of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan.

44.003 - Lien not Created
A claim or judgment in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan may not be a lien on any property in this state owned by a resident of this state.

SUMMARY ANALYSIS
TEXAS PROPERTY CODE

PERSONAL PROPERTY EXEMPTIONS
When the Texas Property Code refers to the term **"homestead"** it is talking about land and land only.
When the Texas Property Code refers to the term **"personal property"** it is discussing every thing except land such as money, jewelry, car, stock and bonds, golf clubs, chickens, cattle, etc.
Personal property is exempt from garnishment, attachment, execution, or other seizure if:
1. A family has an aggregate fair market value of not more than $60,000, after deducting the amount of any liens, security interests, or other charges encumbering the property.
2. A single adult, who is not a member of a family, and has an aggregate fair market value of not more than $30,000. After deducting the amount of any liens, security interests, or other charges encumbering the property.
3. Certain personal property is exempt from seizure and is not included in the aggregate limits set out in (1) & (2) above. They are:
(a) Current wages for personal services, except for court-ordered child support payments;
(b) Professionally prescribed health aids of a debtor or a dependent of a debtor;
(c) Alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor.
4. Does not prevent seizure by a secured creditor with a contractual landlord's lien or other security in the property.
5. Unpaid commissions for personal services not to exceed 25% of the aggregate limitations prescribed in 1 & 2 above are exempt and are included in the aggregate.

PERSONAL PROPERTY EXEMPTIONS
(a) The following personal property is exempt under Section 42.001(a):
1. Home furnishings, including family heirlooms;
2. Provisions for consumption;
3. Farming or ranching vehicles and implements;
4. Tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
5. Wearing apparel;
6. Jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 41.001(a);
7. Two firearms;

8. Athletic and sporting equipment, including bicycles;
9. A two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of the family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person.
10. The following animals and forage on hand for their consumption:
A. Two horses, mules, or donkeys and a saddle, blanket, and bridle for each;
B. 12 head of cattle;
C. 60 head of other types of livestock; and
D. 120 fowl and
11. Household pets
(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code, or Subchapter F, Chapter 501, Transportation Code, or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.
PROCESS SERVER - You may seize any personal property that is in excess of the number or the total dollar amount allowed for exempt property.
There is also an exemption for retirement plans as set out in Sec. 42.0021.
If in the process of seizing personal property, and the property exceeds the exemption and the debtor can be found in the county where the property is located, the officer making the levy shall ask the debtor to designate the personal property to levied on. If the debtor cannot be found in the county or the debtor fails to make a designation within a reasonable time after the officer's request, the officer shall make the designation. **(You should indicate your diligent efforts to located the defendant in your county if he could not be located).**
If the aggregate value of a debtor's personal property exceeds the amount or number exempt from seizure the debtor may designate the property to be levied on. If asked by the court to designate the property to be levied on and the debtor fails to do so with in a reasonable time, or a creditor contests the property is exempt, the court shall make the designation. **(At this point if a creditor files with the court a request that the debtor designate the property to be seized, and the debtor fails to make the designation do in a reasonable time or contests that property is exempt, the court will make the designation).**
REMEMBER THE DUTY OF THE OFFICER IS TO CARRY OUTTHE ORDERS OF THE COURT.
Personal property exemptions do not apply to a child support lien established under the Family Code.
A public library is exempt from attachment, execution and forced sale.
Real property of the State of Texas, including real property held in the name of the state agencies and funds, and the real property of a political subdivision of the State are exempt from attachment, execution and forced sale. Any judgment liens or abstract of judgment is void and unenforceable. (**This means any State, County, City, Hospital Districts, etc. is not subject to seizure).**
Judgment by other States, because of taxation of retirement benefits, or not subject to attachment, execution or seizure of property in Texas.

CHAPTER 3
TEXAS RULES OF PROCEDURE PROCEEDURE

GENERAL RULES-APPLY TO ALL COURTS COUNTY & DISTRICT-JUSTICE OF THE PEACE HAVE THE 500 SERIES OF RULE THAT APPLY TO JUSTICES OF THE PEACE. IF THE 500 SERIES DO NOT ADDRESS A DOCUMENT ISSUED BY THE JUSTICE COURTS THE GENERAL RULES APPLY.

RULE 4 - Computation of Time

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays and legal holidays shall be counted for purposes of the three-day periods in Rule 21 and 21a, extending other periods by three days when service is made by registered or certified mail or by telephonic document transfer, and for purposes of the five-day periods provided for under Rule 748,749,749(a)(b)(c).

JUSTICE OF THE PEACK-TRCP*500.5 (regular suits) & 510.2 (Evictions) count basically the same as district and county courts.*

Note: Rule 5 allows the court to enlarge on the times set out in Rule 4 under certain circumstances.

RULE 6 501.2(d),- Suits Commenced on Sunday

No civil suit shall be commenced nor process issued or served on Sunday, except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings; provided that citation by publication published on Sunday shall be valid.

TEXAS RULES OF JUDICIAL ADMINISTRATION, AMENDED BY ADDING RULE 14

RULE 14 - Statewide Certification to Serve Civil Process

14.1 Purpose.

Under Rules 103 and 501.2(e) of the Texas Rules of Civil Procedure, as amended effective July 1, 2005, civil process may be served by -- in addition to sheriffs and constables and other persons authorized by law, and persons at least 18 years of age authorized by written order of court -- "any person certified under order of the Supreme Court." To improve the standards of practice for private service of process, and to provide a list of persons eligible to serve process in trial courts statewide, the Court -- simultaneous with amending Rules 103 and 536 -- also issued companion orders creating the Process Server Review Board and establishing the basic framework for certification and revocation thereof by the Board. This Rule is intended to build upon that framework by implementing specific procedures to guide the Board's actions in processing applications, investigating complaints regarding certified process servers, and determining disciplinary action under appropriate circumstances.

14.2 Definitions.

(a) Board means the Process Server Review Board

(b) Chair means the Chair of the Board, as appointed by the Supreme Court.

14.3 General Provisions

(a) Membership of Board. Members of the Board are appointed by the Supreme Court of

Texas. Unless an appointment order specifies otherwise, members are appointed to a three-year term.
(b) General Procedure.
(1) A majority of members of the Board shall constitute a quorum.
(2) After a quorum has been established at a Board meeting, the Board may decide, upon a majority vote of those present, any matter properly before it.
(3) The Chair or his/her designee shall preside at the Board Meetings.
(4) The Board may, in its discretion, grant continuances with regard to hearings and other matters before the Board.
(5) The Office of Court Administration shall provide clerical assistance to the Board.
(c) Methods of Service.
(1) Service of any written notice or other document required to be served under this Rule may be accomplished:
(A) by delivering a copy to the person to be served, or their attorney, either in person or by agent or by courier receipted delivery or by registered or certified mail, to the person's last known address: or
(B) by fax, to the person's current fax number.
(2) Service by mail shall be complete upon deposit of the notice or other paper, enclosed in a postage-paid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Post Office. Service by fax after 5:00 p.m. local time of the recipient shall be deemed served on the following day.
(d) Counting Time.
In computing any period of time prescribed or allowed by this Rule, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not Saturday or Sunday or legal holiday. Saturdays, Sundays and legal holidays shall otherwise be counted for purposes of calculating time periods under this Rule, unless the time period is for five days or less, in which case Saturdays, Sundays and legal holidays shall not be counted for any purpose.

14.4 Certification.

(a) Application.
(1) A person seeking statewide certification must file with the Clerk of the Supreme Court a sworn application in the form prescribed by the Supreme Court, available from the Clerk of the Court or on the Court's website.
(2) The application must contain a statement indicating whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude. The application must include a criminal history record obtained within the preceding 90 days from the Texas Department of Public Safety in Austin, Texas. If an applicant's criminal history reflects legal proceedings for which a final disposition is not clearly shown, the applicant bears the burden of establishing that he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude. If an applicant's criminal history reflects that the applicant was charged with a felony or a misdemeanor involving moral turpitude and the charges resulted in an outcome other than acquittal or conviction (such as pretrial diversion, probation , deferred adjudication, community supervision or similar

result), the Board may consider such history in determining whether the application should be granted.
(3) The application must include a certificate from the director of a civil process service course, approved for certification in every state court pursuant to Supreme Court order, stating that the applicant has completed the approved course within the prior year. The applicant bears the burden of establishing that he or she has completed within the prior year a course approved for certification in every state court pursuant to Supreme Court.
(b) Review of Application; Rejection; Approval.
(1) Applications shall be reviewed and either approved by the Board or rejected for good cause stated. In appropriate circumstances, the Board may approve applications on conditional or probationary basis.
(2) The Board may, upon request, allow an applicant with criminal history to appear before the Board and provide oral testimony, documentation, or other information pertinent to the applicant's criminal history. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.
(3) The Board shall promptly notify each applicant in writing of its decision. For applicants rejected, and for applicants approved on conditional or probationary basis, the Board shall specify the good cause for its decision.
(4) An applicant who is dissatisfied with the Board's decision regarding his or her application may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.
(5) For each person certified, the Board shall post on a list maintained on the Supreme Court website the person's name and assigned identification number.
(6) Certification is effective for three years from the last day of the month it issues, unless revoked or suspended under this Rule.
(c) Renewal of Certification.
(1) A certified process server desiring to renew an existing certification must file with the Board a new application, including a current criminal history statement, criminal history record, and course certificate as specified under Rule 14.4(a).
(2) A certified process server who desires to avoid any lapse in certification during renewal should submit a completed application no sooner than ninety days before the expiration date defined under Rule 14.4 (b)(6), and no later that forty-five days before the expiration date. Renewal applications filed more than ninety days before the expiration date will not be processed. However, this provision does not guarantee that a timely filed renewal application will be approved prior to expiration of an existing certification, and it is the responsibility of each process server to ensure, prior to serving any process under statewide certification, that his or her statewide certification remains in effect.

14.5 Disciplinary Actions

(a) Conduct Subject to Disciplinary Action. The Board may revoke or suspend any certification issued under this Rule, or issue a letter of reprimand to a certified process server, on a verified complaint after notice and opportunity to respond, for
(1) conviction of a felony offense, or of a misdemeanor offense involving moral turpitude; or

(2) other good cause as determined by the Board.
A certified process server who, after obtaining statewide certification, is convicted of a felony offense or of a misdemeanor offense involving moral turpitude shall immediately notify the Clerk of the Supreme Court and cease to serve process pursuant to his or her statewide certification.
(b) Filing of Complaint Against Certified Process Server.
(1) A person desiring to make a complaint against a certified process server shall use the official complaint form approved by the Board and provided on the Court's website.
(2) The complaint shall be completed and signed under oath, with all pertinent documentary evidence attached thereto, and submitted to the Board's mailing address provided on the Court's website.
(3) Upon receipt of a properly executed complaint, the Board shall furnish to the certified process server against whom the complaint was filed copies of the complaint and any original attachments thereto, as well as notice stating: (1) the date the Board is scheduled to consider the complaint; (2) that the Board may revoke the process server's statewide certification or impose other disciplinary action after investigation and consideration of the complaint and any written response submitted by the process server and received by the Board at least three business days prior to the meeting at which the complaint will be considered; and (3) that the Board may allow the complainant, the process server, and any fact or character witnesses to appear at the meeting and present oral testimony. (4) The Board may undertake an investigation on its own initiative based upon a credible report or findings of a judicial officer describing conduct that could be subject to disciplinary action under this Rule.
(c) Investigation of Complaints.
(1) A complaint committee consisting of three or more Board members named by the Chair, or any Board members designated by the Chair to perform this duty ad hoc, shall investigate properly executed complaints and determine if they are supported by credible evidence.
(2) Following investigation, the status of a complaint shall be reported to the Board at its next regularly scheduled meeting, or as soon as practicable thereafter, by the head of the complaint committee or any other member designated by the Chair to investigate the complaint.
(d) Hearing Complaints
(1) Any written response submitted by the process server, including any additional documentary evidence, must be received by the Board at least three business days prior to the meeting at which the complaint will be considered.
(2) In addition to any written response submitted under subsection (1), the Board may allow the complainant, the process server and any fact or character witnesses to appear at the meeting and present oral testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.
(3) After hearing a report on a complaint, and considering any written response timely submitted by the process server against whom the complaint was filed, and any testimony, the Board shall vote on the status of the complaint, unless such

determination is continued until another Board meeting for good cause.
(4) The Board shall serve upon the affected process server notice of the Board's determination regarding the complaint and any disciplinary action posed. In its written statement, the Board must specify the good cause for disciplinary action.
(5) A process server who is dissatisfied with a Board decision imposing disciplinary action may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.
(6) Unless the Board directs otherwise, imposition of any disciplinary action is effective immediately following a majority vote to impose that action and is not stayed pending appeal.
(7) Complaints determined by the Board to be unsubstantiated or unfounded shall be dismissed.
(8) Nothing in this provision shall include negotiation of an agreed disciplinary resolution either before or after a complaint is considered by the Board. An agreed disciplinary resolution shall not be effective until approved by the Board.

14.6 Reconsideration of Board Decisions.

(a) Request for Reconsideration.
(1) Any certified process server may request reconsideration of a decision by the Board pertaining to an application for certification or a disciplinary action.
(2) A reconsideration request must be in writing and must be received by the Board within thirty (30) days after the date the Board serves notice of the decision for which reconsideration is requested.
(3) The request must identify the process server and the decision of the Board for which reconsideration is requested and must succinctly state the reason for reconsideration.
(b) Reconsideration Procedure.
(1) After receiving a request for reconsideration, the Chair will place the matter on the agenda for the next scheduled meeting of the Board.
(2) The Board may allow the process server seeking reconsideration to appear at the meeting and present additional testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.
(3) After reconsidering a decision, the Board shall vote on the matter unless such determination is continued until another Board meeting for good cause.
(4) The Board must send the process server written notice stating its decision on reconsideration.
(c) Request for Reconsideration is Necessary Prerequisite for Appeal. A request For reconsideration is a necessary prerequisite to filing an appeal of a Board decision under Rule 14.7.

14.7 Appeal of Board Decisions.

(a) Procedure for Appealing.
(1) Any certified process server seeking to appeal a Board Decision pertaining to an application for certification or a disciplinary action shall submit a written appeal of such decision to the General Counsel for the Office of Court Administration within thirty (30) days after the date written decision is served upon the process server. The appeal should be addressed to the General Counsel at the mailing address listed on the "Contact Information" page of OCA's website, currently located at

http://www.courts.state.tx.us/oca/contact.asp..
(2) The General Counsel shall promptly forward the appeal to a special committee of three Administrative Regional Presiding Judges, see Tex. Gov't Code § 74.041. The Committee shall be chosen on a basis predetermined by the Presiding Judges but shall not include the Presiding Judge for the Administrative Region in which the appellant resided at the time of the Board's decision.
(3) The General Counsel shall notify the Board of the filing of an appeal and upon request, shall make the appeal materials available to the Board or its legal representative.
(4) The appeal must be in a form, or pursuant to a policy, approved by the Regional Presiding Judges, if an appellate form or a policy has been approved by the Regional Presiding Judges. If no appellate form or policy has been approved, the appeal need not be in any particular form, but it must contain (1) a copy of the notice of the Board's decision with which the process server is dissatisfied; (2) a statement succinctly explaining why the process server is dissatisfied with the Board's decision; and (3) a copy of the Board's notice reflecting its decision on reconsideration.
(5) The Office of Court Administration shall adopt rules or policies to ensure that any OCA employee who provides clerical, administrative or other direct support to the Board does not communicate regarding the substance of any appeal under this Rule with any other OCA employee who facilitates the appeal process under this Rule. The rules or policies shall also provide that OCA employees may communicate regarding non substantive aspects of appeals, such as to appeal materials to be forwarded to the special committee.
(b) Consideration of Appeal
(1) Upon receiving notice of an appeal of a disciplinary action, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the complaint and any original attachments; (2) any written response timely submitted by the process serve; (3) notice of the Board's decision imposing disciplinary action; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1) – (5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.
(2) Upon receiving notice of an appeal of a decision denying application for certification, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the process server's application for statewide certification, including a record of the applicant's criminal history form the Department of Public Safety; (2) a written statement of the Board's decision denying the application; (3) any additional documentation considered by the Board related to the applicant's criminal history; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1) – (5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.
(3) The special committee shall consider the appeal under an abuse of discretion standard for all issues except those involving pure questions of law, for which the standard of

review shall be de novo. Under either standard, the burden is on the appellant to establish that the Board's decision was erroneous.
(4) Absent approval by the special committee, submission of materials other than those described under Rule 14.7 (b) (1)-(2) is prohibited. The special committee may, in its sole discretion, allow a process server to submit additional written materials relating to the appeal. Otherwise only the written materials described under Rule 14.7 (b)(1)-(2) will be considered. A request to submit additional materials must clearly identify the additional materials for which inclusion is requested.
(5) The special committee may consider the appeal without a hearing, and may conduct its deliberations by any appropriate means. The special committee may, in its sole discretion conduct a hearing and allow testimony from the affected process server or any other person with knowledge of the underlying facts relating to the application or the disciplinary action complained of.
(6) After consideration of the appeal the special committee shall notify the Board and the process server in writing of its decision either affirming or reversing the Board's decision. No rehearing or further appeal shall be allowed.

DISTRICT AND COUNTY COURTS

RULE 15 - Writs and Process
The style of all writs and process shall be "The State of Texas"; and unless otherwise specially provided by law or these rules every such writ and process shall be directed to any sheriff or any constable within the State of Texas, shall be made returnable on the Monday next after expiration of twenty days from the date of service thereof, and shall be dated and attested by the clerk with the seal of the court impressed thereon, and the date of issuance shall be noted thereon.

JUSTICE OF THE PEACE
RULE 501.1(c) Notice. The citation must include the following notice to the defendant in bold face type:
Notice. The citation must include the following notice to the defendant in boldface type: "You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. ***Youranswerisduebytheendofthe14th day after the day you were served with these papers.*** If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment maybe taken against you. For further information ,consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation.

RULE 16 - Shall Endorse All Process
Each officer or authorized person shall endorse on all process and precepts coming to his hand the day and hour on which he received them, the manner in which he executed them, and the time and place the process was served and shall sign the return officially.

JUSTICE OF THE PEACE

RULE 501.3 DUTIES OF OFFICER OR PERSON RECEIVING CITATION: RETURN OF SERVICE

A. Endorsement; Execution; Return. The officer or authorized person to whom process is delivered must:(1) endorse on the process the date and hour on which he or she received it; (2) execute and return the same without delay; and (3) complete a return of service, which may, but need not, be endorsed on or attached to the citation.

Effective 1-1-14

RULE 21. FILING AND SERVING PLEADINGS AND MOTIONS

(a) *Filing and Service Required.* Every pleading, plea, motion, or application to the court for an order, whether in the form of a motion, plea, or other form of request, unless presented during a hearing or trial, shall must be filed with the clerk of the court in writing, shall must state the grounds therefor, shall must set forth the relief or order sought, and at the same time a true copy shall must be served on all other parties, and shall must be noted on the docket.

(b) *Service of Notice of Hearing.* An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall must be served upon all other parties not less than three days before the time specified for the hearing, unless otherwise provided by these rules or shortened by the court.

(c) *Multiple Parties.* If there is more than one other party represented by different attorneys, one copy of each such pleading shall must be served on delivered or mailed to each attorney in charge.

(d) *Certificate of Service.* The party or attorney of record, shall must certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion, or application.

(e) *Additional Copies.* After one copy is served on a party, that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

(f) *Electronic Filing.*

(1) Requirement. Except in juvenile cases under Title 3 of the Family Code, attorneys must electronically file documents in courts where electronic filing has been mandated. Attorneys practicing in courts where electronic filing is available but not mandated and unrepresented parties may electronically file documents, but it is not required.

(2) Email Address. The email address of an attorney or unrepresented party who electronically files a document must be included on the document.

(3) Mechanism. Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration.

4. (4) Exceptions.
    1. (A) Wills are not required to be filed electronically.
    2. (B) The following documents must not be filed electronically:
        1. (i) documents filed under seal or presented to the court in camera; and
        2. (ii) documents to which access is otherwise restricted by law or court order.
    3. (C) For good cause, a court may permit a party to file other documents in paper form in a particular case.
5. (5) Timely Filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except:

(A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and

(B) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date that the motion is granted.

(6) Technical Failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court. If the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.

(7) Electronic Signatures. A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes:

(A) a "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(B) an electronic image or scanned image of the signature.

8. (8) Format. An electronically filed document must:
    1. (A) be in text-searchable portable document format (PDF);
    2. (B) be directly converted to PDF rather than scanned, if possible;
    3. (C) not be locked; and
    4. (D) otherwise comply with the Technology Standards set by the Judicial

Committee on Information Technology and approved by the Supreme Court.

9. (9) Paper Copies. Unless required by local rule, a party need not file a paper copy of an electronically filed document.

(10) Electronic Notices From the Court. The clerk may send notices, orders, or other communications about the case to the party electronically. A court seal may be electronic.

(11) Non-Conforming Documents. The clerk may not refuse to file a document that fails to conform with this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.

(12) Original Wills. When a party electronically files an application to probate a document as an original will, the original will must be filed with the clerk within three business days after the application is filed.

(13) Official Record. The clerk may designate an electronically filed document or a scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions of the same document unless otherwise required by local rule. But the clerk must retain an original will filed for probate in a numbered file folder.

Comment to 2013 Change: Rule 21 is revised to incorporate rules for electronic filing, in accordance with the Supreme Court's order – Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164 – mandating electronic filing in civil cases beginning on January 1, 2014. The mandate will be implemented according to the schedule in the order and will be completed by July 1, 2016. The revisions reflect the fact that the mandate will only apply to a subset of Texas courts until that date.

Amendments to Rule 21a, Texas Rule of Civil Procedure

RULE 21a. METHODS OF SERVICE

(a) *Methods of Service.* Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in the manner specified below:

(1) Documents Filed Electronically. A document filed electronically under Rule 21 must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. If the email address of the

party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under subparagraph (2).

(2) Documents Not Filed Electronically. A document not filed electronically may be served either in person, or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, by commercial delivery service, or by fax, telephonic document transfer to the recipient's current telecopier number, by email, or by such other manner as the court in its discretion may direct.

(b) *When Complete.*

(1) Service by mail or commercial delivery service shall be complete upon deposit of the paper document, postpaid and properly addressed, in the mail or with a commercial

delivery service., enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(2) Service by fax is complete on receipt. Service completed after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(3) Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.

(c) *Time for Action After Service.* Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, or by telephonic document transfer, three days shall be added to the prescribed period.

(d) *Who May Serve.* Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify.

(e) *Proof of Service.* The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the document notice or instrument was not received, or, if service was by mail, that it the document was not received within three days from the date that it was deposited of deposit in the mail a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just.

(f) *Procedures Cumulative.* These provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

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Comment to 2013 Change: Rule 21a is revised to incorporate rules for electronic service in accordance with the Supreme Court's order – Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164 – mandating electronic filing in civil cases beginning on January 1, 2014.

RULE 21c. PRIVACY PROTECTION FOR FILED DOCUMENTS.

(a) *Sensitive Data Defined.* Sensitive data consists of:
(1) a driver's license number, passport number, social security number, tax

Identification number, or similar government-issued personal identification number;

(2) a bank account number, credit card number, or other financial account number; and

(3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

(b) *Filing of Documents Containing Sensitive Data Prohibited.* Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document, except for wills and documents filed under seal, containing sensitive data may not be filed with a court unless the sensitive data is redacted.

(c) *Redaction of Sensitive Data; Retention Requirement.* Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed.

(d) *Notice to Clerk.* If a document must contain sensitive data, the filing party must notify the clerk by:

(1) Designating the document as containing sensitive data when the document is electronically filed; or

(2) if the document is not electronically filed, by including, on the upper left- hand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

(e) *Non-Conforming Documents.* The clerk may not refuse to file a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

(f) *Restriction on Remote Access.* Documents that contain sensitive data in violation of this rule must not be posted on the Internet.

Comment to 2013 Change: Rule 21c is added to provide privacy protection for documents filed in civil cases.

A. CITATION

RULE 99 - Issuance and Form of Citation (Excerpts)

a. Issuance. Upon the filing of the petition, the clerk, when requested, shall forthwith issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition. Upon request, separate or additional citations shall be issued by the clerk. *The clerk shall retain a copy of the citation in the court's file*.

b. Form. The citation shall:

1. Be styled "The State of Texas",
2. Be signed by the clerk under seal of court,
3. Contain name and location of the court,
4. Show date of filing of the petition,
5. Show date of issuance of citation,
6. Show the file number,
7. Show names of parties,
8. Be directed to the defendant,
9. Show the name and address of attorney for plaintiff, otherwise the address of plaintiff,
l0. Contain the time within which these rules require the defendant to file a written answer with the clerk who issued citation,
11. Contain address of the clerk, and
12. Shall notify the defendant that in case of failure of defendant to file an answer, judgment by default may be rendered for the relief demanded in the petition. The citation shall direct the defendant to file a written answer to the plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of twenty days after the date of service thereof. The requirement of subsection 10 and 12 of this section shall be in the form set forth in section c of this rule.

c & d - - - - - - - - -

RULE 103 - Who May Serve - Amended (Effective July1, 2005)

Process —including citation and other notices, writs, orders, and other papers issued by the court—may be served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the

court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court. Service by registered or certified mail and litigation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is party to or interested in the outcome of a suit may serve any process in that suit, and, unless otherwise authorized by a written court order, only a sheriff or constable may service a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced to the person delivering the process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

Comment - 2005

The rule is amended to include among the persons authorized to effect service theses who meet certification requirements promulgated by the Supreme Court and to prohibit private individuals from serving certain types of process unless, in rare circumstances, a court authorizes an individual to do so.

RULE 105 - DUTY OF OFFICER OR PERSON RECEIVING PROCESS

The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

Note: Be sure and check the last day to return the execution. The execution must be returned to the court within 30, 60 or 90 days. The writ must specify how long the writ is issued for.

RULE 106 - Method of Service

(a) Unless the citation or an order of he court otherwise directs, the citation shall be served by any person authorized by Rule 103 by

(1) delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto, or

(2) **mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto**. *(The plaintiff must request the officer serve a document by mail and pay the postage in advance and in addition to the regular service fee. TRCP 17.025)*

(b) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a)(2 at the location named in such affidavit but has not been successful, the court may authorize service

(1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or

(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

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NOTE: The officer's affidavit is used by the plaintiff to prepare a motion for alternate service. It should state how the officer would like to do the alternate service—example:

attach it to the main entry. Justice of the Peace courts the officer's affidavit may act as the motion for alternate service.

RULE 107 - RETURN OF SERVICE
Also CPRC 17.030

(a) The officer or authorized person executing the citation must complete a return of service. The return may, but need not, be endorsed on or attached to the citation.
(b) The return, together with any document to which it is attached, must include the following information.
(1) the cause number and case name;
(2) the court in which the case is filed;
(3) a description of what was served;
(4) the date and time the process was received for service;
(5) the person or entity to be served;
(6) the address to be served;
(7) the date of service or attempted service;
(8) the manner or delivery of service or attempted service;
(9) the name of the person who served or attempted to serve the process;
(10) if the person named in (9) is a process server certified under order of the Supreme Court, his or her identification number and the expiration date of his or her certification; and
(11) any other information required by rule of law
(c) When the citation was served by registered or certified mail as authorized by Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee's signature.
(d) When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain.
(e) The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other that a sheriff, constable, or the clerk of the court, the return shall be signed under penalty of perjury and contain the following statement:
"My name is (First) (Middle) (Last), my date of birth is (DOB), and my address is (Street) (City) (State) (Zip Code), (Country). I declare under penalty of perjury that the foregoing is true and correct.
Executed in (County) County, State of (State), on the (Day) date of (Month), (Year).
(Declarant)"
(f) Where citation is executed by an alternative method as authorized by Rule 106, proof of service shall be made in the manner ordered by the court.
(g) The return must be filed with the court. The return and any document to which it is attached may be filed electronically or by facsimile, if those methods of

filing are available.
(h) *No default judgment shall be granted in any cause until proof of service as provided by this rule of by Rules 108 or 108a,* or as ordered by the court in the event citation is executed under Rule 106, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment.

EXAMPLES

Making a proper return and proof service is most important and the instructor should provide examples and make sure that the return must reflect the actual truth in executing the process given to him. Anything less could cause the return to be faulty and of no effect.

1. Texas Juris 3rd, Vol. 59, p. 412 defines a return of process as " a short account in writing made by an officer in respect to the manner in which he or she has executed a writ or process. It is the officer's official statement of the acts done by him or her under the writ in obedience to its directions and in formality with the requirements of law. The return of citation is but a certificate of the officer as to where, when and how it was executed". It is suggested that you check your county library and read the discussion of executing a writ or process and making a proper return.
2. All process should be executed in a timely manner.
3. Always set out the diligence you used in attempting service such as the number times you went to the address provided to you, the times you went, if you talked to neighbors as whereabouts the defendant might be found.
4. You must be specific as to the time and manner of service.
5. Place of service and by whom process was served.
6. If you are a deputy it proper to show your sheriffs name and signed by you as deputy, if you made the service.
7. If there is more than one defendant they each must be served individually.

RULE 108 - Service in Another State

Where the defendant is absent from the State, or is a nonresident of the State, the form of notice to such defendant of the institution of the suit shall be the same as prescribed for citation to the resident defendant; and such notice may be served by any disinterested person who is not less than eighteen years of age, in the same manner as provided in Rule 106 hereof. The return of service in such cases shall be completed in accordance with Rule 107. A defendant served with such notice shall be required to appear and answer in the same manner and time and under the same penalties as if he has been personally served with a citation within this State to the full extent that he may be required to appear and answer under Constitution of the United States in an action either in rem or in personam.

RULE 108a -Service of Process in Foreign Countries

NOTE: SHERIFF/DEPUTY NOT REQUIRED TO SERVICE PROCESS OUTSIDE OF THE STATE OF TEXAS NOR AS TO A FOREIGN COUNTRY. THIS IS THE PROBLEM OF PLAINTIFF'S ATTORNEY!

RULE 109 - Citation by Publication

When a party to a suit, his agent or attorney, shall make oath that the residence of any party defendant is unknown to affiant, and to such party when the affidavit is made by his agent or attorney, or that such defendant is a transient person, and that after due diligence such party

and the affiant have been unable to locate the whereabouts of such defendant, or that such defendant is absent from or is a nonresident of the State, and that the party applying for the citation has attempted to obtain personal service of nonresident notice as provided for in Rule 108, but has been unable to do so, the clerk shall issue citation for such defendant for service by publication. In such cases it shall be the duty of the court trying the case to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant or to obtain service of non-resident notice, as the case may be, before granting any judgment on such service.

NOTE: IT IS THE OBLIGATION OF THE ATTORNEY FOR THE PLAINTIFF TO GET THE CLERK OF THE COURT TO ISSUE A CITATION FOR SUCH DEFENDANT FOR SERVICE BY PUBLICATION.

If the sheriff receives this citation it is his duty to see that a newspaper publish same and make his return.

RULE 114 - Citation by Publication; Requisites (Excerpts)

If citation is issued from the district or county court, the citation shall command such parties to appear and answer at or before 10 o'clock a.m. of the first Monday after the expiration of 42 days from the date of issuance thereof, specifying the day of the week, the day of the month, and the time of day the defendant is required to answer.

If issued from the justice of the peace court, such citation shall command such parties to appear and answer on or before the first day of the first term court which convenes after the expiration of 42 days from the date of issue thereof, specifying the day of the week, and day of the month, that such term will meet.

RULE 116 - Service of Citation by Publication

The citation, when issued, shall be served by the sheriff or any constable of any county of the State of Texas or by the clerk of the court in which the case is pending, by having the same published once each week for four (4) consecutive weeks, the first publication to be at least twenty-eight (28) days before the return day of the citation. In all suits which do not involve the title to land or the partition of real estate, such publication shall be made in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in an adjoining county where a newspaper is published. In all suits which involve the title to land or partition of real estate, such publication shall be made in the county where the land, or a portion thereof, is situated, if there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published.

RULE 117 - Return of Citation by Publication

The return of the officer executing such citation shall show how and when the citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.

RULE 118 - Amendment of any Process or Service (Excerpts)

At any time in its discretion and upon such notice and on such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

B. COSTS AND SECURITY

RULE 125 - Parties Responsible

Each party to a suit shall be liable to the officers of the court for all costs incurred by himself.

NOTE: The civil law suit belongs to the plaintiff. We can not require private contractors to provided service to carry out the court orders. The county can not spend public money to provided services from private contractors to carry out the court orders. It maybe necessary for the plaintiff or his attorney to make payment arrangements before an order can be executed. This money maybe recovered in the judgment.

RULE 126 - Fee for Execution of Process, Demand

No sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; except when affidavit is filed, as provided by law or these rules. The clerk issuing the process shall indorse thereon the words "pauper oath filed," and sign his name officially below them; and the officer in whose hands such process is placed for service shall serve the same.

RULE 127 - Parties Liable for Other Costs

Each party to a suit shall be liable for all costs incurred by him. If the costs cannot be collected from the party against whom they have been adjudged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more.

RULE 129 - How Costs Collected

If any party responsible for costs fails or refuses to pay the same within ten days after demand for payment, the clerk or justice of the peace may make certified copy of the bill of costs then due, and place the same in the hands of the sheriff or constable for collection. All taxes imposed on law proceedings shall be included in the bill of costs. Such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the issuance of an execution for costs.

RULE 130 - Officer to Levy

The sheriff or constable upon demand and failure to pay said bill of costs, may levy upon a sufficient amount of property of the person from whom said costs are due to satisfy the same, and sell such property as under execution. Where such party is not a resident of the county where such suit is pending, the payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, unless he is compelled to make a levy.

NOTE: Bill of costs under Rule 129 & 130 is used the same as an execution. The return is made on the bill of cost as though it were an execution. If there is not a return on the bill of costs then you will need to make one and attach it to the bill of costs and return it to the proper court. Remember that an execution under Rule 130 is subject to the homestead and personal property exemption.

RULE 149 - Execution for Costs

When costs have been adjudged against a party and are not paid, the clerk or justice of the court in which the suit was determined may issue execution, accompanied by an itemized bill of costs, against such party to be levied and collected as in other cases; and said officer, on demand of any party to whom any such costs are due, shall issue execution for costs at once. This rule shall not apply to executors, administrators or guardians in cases where costs are adjudged against the estate of a deceased person or of a ward. No execution shall issue in any

case for costs until after judgment rendered therefor by the court.

II. RULES OF PRACTICE IN JUSTICE COURTS Part V

TEXAS RULES OF CIVIL PROCEDURE

PART V. RULES OF PRACTICE IN JUSTICE COURTS

RULE 500. GENERAL RULES

RULE 500.1. CONSTRUCTION OF RULES

Unless otherwise expressly provided, in Part V of these Rules of Civil Procedure:

(a) the past, present, and future tense each includes the other;

(b) the term "it" includes a person of either gender or an entity; and

(c) the singular and plural each includes the other.

RULE 500.2. DEFINITIONS

In Part V of these Rules of Civil Procedure:

(a) "Answer" is the written response that someone who is sued must file with the court after being served with a citation.

(b) "Citation" is the court-prepared document required to be served upon a party to inform the

party that it has been sued.

(c) "Claim" is the legal theory and alleged facts that, if proven, entitle a party to relief against another party in court.

(d) "Clerk" is a person designated by the judge as a justice court clerk, or the judge if there is no clerk available.

(e) "Counterclaim" is a claim brought by a party who has been sued against the party who filed

suit, for example, a defendant suing a plaintiff.

(f) "County court" is the county court, statutory county court, or district court in a particular county with jurisdiction over appeals of civil cases from justice court.

(g) "Cross-claim" is a claim brought by one party against another party on the same side of a

lawsuit. For example, if a plaintiff sues two defendants, A and B, A can seek relief against

B by means of a cross-claim.

(h) "Default judgment" is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiffs claims in the lawsuit.

(i) "Defendant" is someone who is sued, including a plaintiff against whom a counterclaim is filed.

(j) "Defense" is an assertion by a defendant that the plaintiff is not entitled to relief from the court.

(k) "Discovery" is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.

(1) "Dismissed without prejudice" means a case has been dismissed but has not been finally decided and may be refiled.

(m) "Dismissed with prejudice" means a case has been dismissed and finally decided and may not be refiled.

(n) "Judge" is a justice of the peace.

(o) "Judgment" is a final order by the court that states the relief, if any, a party is entitled to or must provide.

(p) "Jurisdiction" is the authority of the court to hear and decide a case,

(q) "Motion" is a request that the court make a specified ruling or order.

(r) "Notice" is a document prepared and delivered by the court or a party stating that something is required of the party receiving the notice.

(s) "Party" is a person involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.

(t) "Petition" is a formal written application stating a party' s claims and requesting relief from the court. It is the first document filed with the court to begin a lawsuit.

(u) "Plaintiff is someone who sues, including a defendant who files a counterclaim.

(v) "Pleading" is a written document filed by a party, including a petition and an answer, that

states a claim or defense and outlines the relief sought.

(w) "Relief is the remedy a party requests from the court, such as the recovery of money or the return of property.

(x) "Serve" and "service" are delivery of citation as required by Rule 501.2, or of a document as required by Rule 501.4.

(y) "Sworn" means signed in front of someone authorized to take oaths, such as a notary, or signed under penalty of perjury. Filing a false sworn document can result in criminal prosecution.

(z) "Third party claim" is a claim brought by a party being sued against someone who is not yet a party to the case.

RULE 500.3. APPLICATION OF RULES IN JUSTICE COURT CASES

(a) Small Claims Case. A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property. The claim can be for no more than $10,000 excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

(b) Debt Claim Case. A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than $10,000 in damages, excluding statutory interest and court costs but including attorney fees, if any. Debt claim cases injustice court are governed by Rules 500-507 and 508 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 508 and the rest of Part V, Rule 508 applies.

(c) Repair and Remedy Case. A repair and remedy case is a lawsuit brought to seek judicial remedy for the alleged failure of a landlord to remedy or repair a condition as required by Chapter 92 of the Texas Property Code. The relief sought can be for no more than $10,000,

excluding statutory interest and court costs but including attorney fees, if any. Repair and remedy cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 509 and the rest of Part V, Rule 509 applies.

(d) Eviction Case. An eviction case is a lawsuit brought to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than $ 10,000, including costs and attorney fees, if any. Eviction cases are governed by Rules 500-507 and 510 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 510 and the rest of Part V, Rule 510 applies.

(e) Application of Other Rules. The other Rules of Civil Procedure and the Rules of Evidence do not apply except:

(1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or

(2) when otherwise specifically provided by law or these rules.

(f) Examination of Rules. The court must make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours.

RULE 500.4. REPRESENTATION IN JUSTICE COURT CASES

(a) Representation of an Individual. An individual may:

(1) represent himself or herself;

(2) be represented by someone who is not an attorney and is not being compensated for the representation; or

(3) be represented by an attorney.

(b) Representation of a Corporation or Other Entity. A corporation or other entity may:

(1) be represented by an employee, owner, member, officer, or partner of the entity who

is not an attorney;

(2) be represented by a property manager in an eviction case; or

(3) be represented by an attorney.

RULE 500.5. COMPUTATION OF TIME; TIMELY FILING

(a) Computation of Time. To compute a time period in these rules:

(1) exclude the day of the event that triggers the period;

(2) count every day, including Saturdays, Sundays, and legal holidays; and

(3) include the last day of the period, but

(A) if the last day is a Saturday, Sunday, or legal holiday, the time period is

extended to the next day that is not a Saturday, Sunday, or legal holiday; or

(B) if the last day for filing falls on a day during which the court is closed before

5:00 p.m., the time period is extended to the court's next business day.

(b) Timely Filing by Mail. Any document required to be filed by a given date is considered

timely filed if deposited in the U.S. mail on or before that date, and received within 10 days

of the due date. A legible postmark affixed by the United States Postal Service is evidence

of the date of mailing.

(c) Extensions. The judge may, for good cause shown, extend any time period under these rules

except those relating to new trial and appeal.

RULE 500.6. JUDGE TO DEVELOP THE CASE

In order to develop the facts of the case, a judge may question a witness or party and may summon any person or party to appear as a witness when the judge considers it necessary to ensure a correct judgment and a speedy disposition.

RULE 500.7. EXCLUSION OF WITNESSES

The court must, on a party's request, or may, on its own initiative, order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize the exclusion of:

(a) a party who is a natural person or the spouse of such natural person;

(b) an officer or employee designated as a representative of a party who is not a natural person; or

(c) a person whose presence is shown by a party to be essential to the presentation of the party's case.

RULE 500.8. SUBPOENAS

(a) Use. A subpoena may be used by a party or the judge to command a person or entity to attend and give testimony at a hearing or trial. A person may not be required by subpoena to appear in a county that is more than 150 miles from where the person resides or is served.

(b) Who Can Issue. A subpoena may be issued by the clerk of the justice court or an attorney authorized to practice in the State of Texas, as an officer of the court.

(c) Form. Every subpoena must be issued in the name of the "State of Texas" and must:

(1) state the style of the suit and its case number;

(2) state the court in which the suit is pending;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the date, time, place, and nature of the action required by the person to whom the subpoena is directed;

(6) identify the party at whose instance the subpoena is issued, and the party's attorney of record, if any;

(7) state that "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court from which the subpoena is issued and may be punished by fine or confinement, or both"; and

(8) be signed by the person issuing the subpoena.

(d) Service: Where, By Whom, How. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or by any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record.

(e) Compliance Required. A person commanded by subpoena to appear and give testimony

must remain at the hearing or trial from day to day until discharged by the court or by the party summoning the witness. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(f) Objection. A person commanded to attend and give testimony at a hearing or trial may object or move for a protective order before the court at or before the time and place specified for compliance. A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

(g) Enforcement. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or of a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered. Proof of service must be made by filing either:

(1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

RULE 500.9. DISCOVERY

(a) Pretrial Discovery. Pretrial discovery is limited to that which the judge considers reasonable and necessary. Any requests for pretrial discovery must be presented to the court for

approval by written motion. The motion must be served on the responding party. The

discovery request must not be served on the responding party unless the judge issues a

signed order approving the request after notice to the responding party and a hearing.

Failure to comply with a discovery order can result in sanctions, including dismissal of the

case or an order to pay the other party's discovery expenses.

(b) Post-judgment Discovery. Post-judgment discovery is not required to be filed with the court.

The party requesting discovery must give the responding party at least 30 days to respond

to a post-judgment discovery request. The responding party may file a written objection

with the court within 30 days of receiving the request. If an objection is filed, the judge must

hold a hearing to determine if the request is valid. If the objection is denied, the judge must

order the party to respond to the request. If the objection is upheld, the judge may reform

the request or dismiss it entirely.

RULE 501. CITATION AND SERVICE

RULE 501.1. CITATION

(a) Issuance. When a petition is filed with a justice court to initiate a suit, the clerk must

promptly issue a citation and deliver the citation as directed by the plaintiff. The plaintiff

is responsible for obtaining service on the defendant of the citation and a copy of the petition

with any documents filed with the petition. Upon request, separate or additional citations must be issued by the clerk. The clerk must retain a copy of the citation in the court's file.

(b) Form. The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) show the date of filing of the petition;

(5) show the date of issuance of the citation;

(6) show the file number and names of parties;

(7) state the plaintiffs cause of action and relief sought;

(8) be directed to the defendant;

(9) show the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;

(10) state the date by which the defendant is required to file a written answer with the court issuing citation; and

(11) notify defendant that if the defendant fails to file an answer, judgment by default may be rendered for the relief demanded in the petition.

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

(d) Copies. The plaintiff must provide enough copies to be served on each defendant. If the party fails to do so, the clerk may make copies and charge the plaintiff the allowable copying cost.

RULE 501.2. SERVICE OF CITATION

(a) Who May Serve. No person who is a party to or interested in the outcome of the suit may serve citation in that suit, and, unless otherwise authorized by written court order, a citation in an eviction proceeding and writs and notices of attachment, execution, garnishment, sequestration, possession, re-entry and restoration of utility service, and turnover must be served by a sheriff or constable. Other citations may be served by:

(1) a sheriff or constable;

(2) a process server certified under order of the Supreme Court;

(3) the clerk of the court, if the citation is served by registered or certified mail; or

(4) a person authorized by court order who is 18 years of age or older.

(b) Method of service. Citation must be served by:

(1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or

(2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested.

(c) Service Fees. A plaintiff must pay all fees for service unless the plaintiff has filed a sworn statement of inability to pay the fees with the court. If the plaintiff has filed a sworn statement of inability to pay, the plaintiff must arrange for the citation to be served by a sheriff, constable, or court clerk.

(d) Service on Sunday. A citation cannot be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings.

(e) Alternative Service of Citation. If the methods under (b) are insufficient to serve the defendant, the plaintiff, or the constable, sheriff, process server certified under order of the Supreme Court, or other person authorized to serve process, may make a request for alternative service. This request must include a sworn statement describing the methods attempted under (b) and stating the defendant's usual place of business or residence, or other

place where the defendant can probably be found. The court may authorize the following types of alternative service:

(1) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or

(2) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit.

(f) Service by Publication. In the event that service of citation by publication is necessary, the process is governed by the rules in county and district court.

RULE 501.3. DUTIES OF OFFICER OR PERSON RECEIVING CITATION

(a) Endorsement; Execution; Return. The officer or authorized person to whom process is delivered must:

(1) endorse on the process the date and hour on which he or she received it;

(2) execute and return the same without delay; and

(3) complete a return of service, which may, but need not, be endorsed on or attached to the citation.

(b) Contents of Return. The return, together with any document to which it is attached, must include the following information:

(1) the case number and case name;

(2) the court in which the case is filed;

(3) a description of what was served;

(4) the date and time the process was received for service;

(5) the person or entity served;

(6) the address served;

(7) the date of service or attempted service;

(8) the manner of delivery of service or attempted service;

(9) the name of the person who served or attempted service;

(10) if the person named in (9) is a process server certified under Supreme Court Order, his or her identification number and the expiration date of his or her certification; and

(11) any other information required by rule or law.

(c) Citation by Mail. When the citation is served by registered or certified mail as authorized by Rule 501.2(b)(2), the return by the officer or authorized person must also contain the receipt with the addressee's signature.

(d) Failure to Serve. When the officer or authorized person has not served the citation, the return must show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if ascertainable.

(e) Signature. The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is (First) (Middle) (Last), my date of birth is (Month) (Day), (Year), and my address is (Street), (City), (State) (Zip Code). (County) . I declare under penalty of perjury that the foregoing is true and correct.

Executed in County, State of , on the day of (Month) , (Year) .

Declarant"

(f) Alternative Service. Where citation is executed by an alternative method as authorized by 501.2(e), proof of service must be made in the manner ordered by the court.

(g) Filing Return. The return and any document to which it is attached must be filed with the court and may be filed electronically or by fax, if those methods of filing are available.

(h) Prerequisite for Default Judgment. No default judgment may be granted in any case until proof of service as provided by this rule, or as ordered by the court in the event citation is executed by an alternative method under 501.2(e), has been on file with the clerk of the court 3 days, exclusive of the day of filing and the day of judgment.

RULE 501.4. SERVICE OF PAPERS OTHER THAN CITATION

(a) Method of Service. Other than a citation or oral motions made during trial or when all parties are present, every notice required by these rules, and every pleading, plea, motion, application to the court for an order, or other form of request, must be served on all other parties in one of the following ways.

(1) In person. A copy may be delivered to the party to be served, or the party's duly authorized agent or attorney of record, in person or by agent.

(2) Mail or courier. A copy may be sent by courier-receipted delivery or by certified or registered mail, to the party's last known address. Service by certified or registered mail is complete when the document is properly addressed and deposited in the United States mail, postage prepaid.

(3) Fax. A copy may be faxed to the recipient's current fax number. Service by fax after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(4) Email. A copy may be sent to an email address expressly provided by the receiving party, if the party has consented to email service in writing. Service by email after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(5) Other. A copy may be delivered in any other manner directed by the court.

(b) Timing. If a document is served by mail, 3 days will be added to the length of time a party has to respond to the document. Notice of any hearing requested by a party must be served on all other parties not less than 3 days before the time specified for the hearing.

(c) Who May Serve. Documents other than a citation may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify.

(d) Certificate of service. The party or the party's attorney of record must include in writing on all documents filed a signed statement describing the manner in which the document was served on the other party or parties and the date of service. A certificate by a party or the party's attorney of record, or the return of the officer, or the sworn statement of any other person showing service of a notice is proof of service.

(e) Failure to Serve. A party may offer evidence or testimony that a notice or document was not received, or, if service was by mail, that it was not received within 3 days from the date of mailing, and upon so finding, the court may extend the time for taking the action required of the party or grant other relief as it deems just.

RULE 502. INSTITUTION OF SUIT

RULE 502.1. PLEADINGS AND MOTIONS MUST BE WRITTEN, SIGNED, AND FILED

Except for oral motions made during trial or when all parties are present, every pleading, plea, motion, application to the court for an order, or other form of request must be written and signed by the party or its attorney and must be filed with the court. A document may be filed with the court by personal or commercial delivery, by mail, or electronically, if the court allows electronic filing.

RULE 502.2. PETITION

(a) Contents. To initiate a suit, a petition must be filed with the court. A petition must contain:

(1) the name, address, telephone number, and fax number, if any, of the plaintiff and the plaintiffs attorney, if applicable;

(2) the name, address, and telephone number, if known, of the defendant;

(3) the amount of money, if any, the plaintiff seeks;

(4) a description and claimed value of any personal property the plaintiff seeks;

(5) the basis for the plaintiffs claim against the defendant; and

(6) if the plaintiff consents to email service of the answer and any other motions or pleadings, a statement consenting to email service and email contact information.

(b) Justice Court Civil Case Information Sheet. A justice court civil case information sheet, in the form promulgated by the Supreme Court of Texas, must accompany the filing of a petition and must be signed by the plaintiff or the plaintiffs attorney. The justice court civil case information sheet is for data collection for statistical and administrative purposes and does not affect any substantive right. The court may not reject a pleading because the pleading is not accompanied by a justice court civil case information sheet.

RULE 502.3. FEES; INABILITY TO PAY

(a) Fees and Statement of Inability to Pay. On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to afford to pay the fees must file a sworn statement of inability to pay. Upon filing the statement, the clerk must docket the action, issue citation, and provide any other customary services.

(b) Contents of Statement of Inability to Pay.

(1) The statement must contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses.

(2) The statement must contain the following: "I am unable to pay court fees. I verify that the statements made in this statement are true and correct." The statement must

be sworn before a notary public or other officer authorized to administer oaths or be signed under penalty of perjury.

(c) IOLTA Certificate. If the party is represented by an attorney who is providing free legal services because of the party's indigence, without contingency, and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA funded program screened the party for income eligibility under the IOLTA income guidelines. A party's statement of inability to pay accompanied by an attorney's IOLTA certificate may not be contested under (d).

(d) Contest. The defendant may file a contest of the statement of inability to pay at any time within 7 days after the day the defendant's answer is due. If the statement attests to receipt of government entitlement based on indigence, the statement may only be contested with regard to the veracity of the attestation. If contested, the judge must hold a hearing to determine the plaintiffs ability to pay. At the hearing, the burden is on the party who filed the statement to prove its inability to pay. The judge may, regardless of whether the defendant contests the statement, examine the statement and conduct a hearing to determine the plaintiffs ability to pay. If the judge determines that the plaintiff is able to afford the fees, the judge must enter a written order listing the reasons for the determination, and the plaintiff must pay the fees in the time specified in the order or the case will be dismissed without prejudice.

RULE 502.4. VENUE — WHERE A LAWSUIT MAY BE BROUGHT

(a) Applicable Law. Laws specifying the venue - the county and precinct where a lawsuit may be brought - are found in Chapter 15, Subchapter E of the Texas Civil Practice and Remedies Code, which is available online and for examination during the court's business hours.

(b) General Rule. Generally, a defendant in a small claims case as described in Rule 500.3(a) or a debt claim case as described in Rule 500.3(b) is entitled to be sued in one of the following venues:

(1) the county and precinct where the defendant resides;

(2) the county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred;

(3) the county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or

(4) the county and precinct where the property is located, in a suit to recover personal property.

(c) Non-Resident Defendant; Defendant's Residence Unknown. If the defendant is a non-resident of Texas, or if defendant's residence is unknown, the plaintiff may file the suit in the county and precinct where the plaintiff resides.

(d) Motion to Transfer Venue. If a plaintiff files suit in an improper venue, a defendant may challenge the venue selected by filing a motion to transfer venue. The motion must be filed before trial, no later than 21 days after the day the defendant's answer is filed, and must contain a sworn statement that the venue chosen by the plaintiff is improper and a specific county and precinct of proper venue to which transfer is sought. If the defendant fails to name a county and precinct, the court must instruct the defendant to do so and allow the defendant 7 days to cure the defect. If the defendant fails to correct the defect, the motion will be denied, and the case will proceed in the county and precinct where it was originally filed.

(1) Procedure.

(A) Judge to Set Hearing. If a defendant files a motion to transfer venue, the judge must set a hearing at which the motion will be considered.

(B) Response to Motion. A plaintiff may file a response to a defendant's motion

to transfer venue.

(C) Evidence and Argument. The parties may present evidence and make legal arguments at the hearing. The defendant presents evidence and argument first. A witness may testify at a hearing, either in person or, with permission of the court, by means of telephone or an electronic communication system. Written documents offered by the parties may also be considered by the judge at the hearing.

(D) Judge's Decision. The judge must either grant or deny the motion to transfer venue. If the motion is granted, the judge must sign an order designating the court to which the case will be transferred. If the motion is denied, the case will be heard in the court in which the plaintiff initially filed suit.

(E) Review. Motions for rehearing and interlocutory appeals of the judge's ruling on venue are not permitted.

(F) Time for Trial of the Case. No trial may be held until at least the 14th day after the judge's ruling on the motion to transfer venue.

(G) Order. If the motion to transfer venue is granted, the court must issue an order of transfer stating the reason for the transfer and the name of the court to which the transfer is made. When such an order of transfer is made, the judge who issued the order must immediately make out a true and correct transcript of all the entries made on the docket in the case, certify the transcript, and send the transcript, with a certified copy of the bill of costs and the original papers in the case, to the court in the precinct to which the case has been transferred. The court receiving the case must then notify the plaintiff that the case has been received and, if the case is transferred to a different county, that the plaintiff has 14 days after receiving the notice to pay the filing fee in the new court, or file a sworn statement of inability to

pay. The plaintiff is not entitled to a refund of any fees already paid. Failure

to pay the fee or file a sworn statement of inability to pay will result in

dismissal of the case without prejudice.

(e) Fair Trial Venue Change. If a party believes it cannot get a fair trial in a specific precinct or before a specific judge, the party may file a sworn motion stating such, supported by the

sworn statements of two other credible persons, and specifying if the party is requesting a

change of location or a change of judge. Except for good cause shown, this motion must be filed no less than 7 days before trial. If the party seeks a change of judge, the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge must appoint a visiting judge to hear the case. If the party seeks a change in location, the case must be transferred to the nearest justice court in the county that is not subject to the same or some other disqualification. If there is only one justice of the peace precinct in the county, then the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge must appoint a visiting judge to hear the case. In cases where exclusive jurisdiction is within a specific precinct, as in eviction cases, the only remedy available is a change of judge. A party may apply for relief under this rule only one time in any given lawsuit.

(f) Transfer of Venue by Consent. On the written consent of all parties or their attorneys, filed with the court, venue must be transferred to the court of any other justice of the peace of the county, or any other county.

RULE 502.5. ANSWER

(a) Requirements. A defendant must file with the court a written answer to a lawsuit as directed

by the citation and must also serve a copy of the answer on the plaintiff. The answer must

contain:

(1) the name, address, telephone number, and fax number, if any, of the defendant and

the defendant's attorney, if applicable; and

(2) if the defendant consents to email service, a statement consenting to email service

and email contact information.

(b) General Denial. An answer that denies all of the plaintiffs allegations and demands that

they be proven without specifying the reasons is sufficient to constitute an answer or

appearance and does not bar the defendant from raising any defense at trial.

(c) Answer Docketed. The defendant's appearance must be noted on the court's docket.

(d) Due Date. Unless the defendant is served by publication, the defendant's answer is due by the end of the 14th day after the day the defendant was served with the citation and petition, but

(1) if the 14th day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; or

(2) if the 14th day falls on a day during which the court is closed before 5:00 PM, the answer is due on the court's next business day.

(e) Due Date When Defendant Served by Publication. If a defendant is served by publication, the defendant's answer is due by the end of the 42nd day after the day the citation was issued, but

(1) if the 42nd day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; or

(2) if the 42nd day falls on a day during which the court is closed before 5:00 PM, the answer is due on the court's next business day.

RULE 502.6. COUNTERCLAIM; CROSS-CLAIM; THIRD-PARTY CLAIM

(a) Counterclaim. A defendant may file a petition stating as a counterclaim any claim against a plaintiff that is within the jurisdiction of the justice court, whether or not related to the claims in the plaintiff s petition. The defendant must file a counterclaim petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. The court need not generate a citation for a counterclaim and no answer to the counterclaim need be filed. The defendant must serve a copy of the counterclaim as provided by Rule 501.4.

(b) Cross-Claim. A plaintiff seeking relief against another plaintiff, or a defendant seeking relief against another defendant may file a cross-claim. The filing party must file a cross-claim

petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 501.2 on any party that has not yet filed a petition or an answer, as appropriate. If the party filed against has filed a petition or an answer, the filing party must serve the cross-claim as provided by Rule 501.4.

(c) Third Party Claim. A defendant seeking to bring another party into a suit who may be liable for all or part of the plaintiffs claim against the defendant may file a petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 501.2.

RULE 502.7. AMENDING AND CLARIFYING PLEADINGS

(a) Amending Pleadings. A party may withdraw something from or add something to a pleading, as long as the amended pleading is filed and served as provided by Rule 501.4 not less than 7 days before trial. The court may allow a pleading to be amended less than 7 days before trial if the amendment will not operate as a surprise to the opposing party.

(b) Insufficient Pleadings. A party may file a motion with the court asking that another party be required to clarify a pleading. The court must determine if the pleading is sufficient to place all parties on notice of the issues in the lawsuit, and may hold a hearing to make that determination. If the court determines a pleading is insufficient, the court must order the party to amend the pleading and set a date by which the party must amend. If a party fails to comply with the court's order, the pleading may be stricken.

RULE 503. DEFAULT JUDGMENT; PRE-TRIAL MATTERS; TRIAL

RULE 503.1. IF DEFENDANT FAILS TO ANSWER

(a) Default Judgment. If the defendant fails to file an answer by the date stated in Rule 502.5,

the judge must ensure that service was proper, and may hold a hearing for this purpose. If it is determined that service was proper, the judge must render a default judgment in the following manner:

(1) Claim Based on Written Document. If the claim is based on a written document signed by the defendant, and a copy of the document has been filed with the court and served on the defendant, along with a sworn statement from the plaintiff that this is a true and accurate copy of the document and the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for, the judge must render judgment for the plaintiff in the requested amount, without any necessity for a hearing. The plaintiffs attorney may also submit affidavits supporting an award of attorney fees to which the plaintiff is entitled, if any.

(2) Other Cases. Except as provided in (1), a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant. With the permission of the court, a party may appear at a hearing by means of telephone or an electronic communication system.

(b) Appearance. If a defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not enter a default judgment and the case must be set for trial as described in Rule 503.3.

(c) Post-Answer Default. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

(d) Notice. The plaintiff requesting a default judgment must provide to the clerk in writing the last known mailing address of the defendant at or before the time the judgment is signed. When a default judgment is signed, the clerk must immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff, and note the fact of such

mailing on the docket. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the

judgment was rendered, and the date the judgment was signed. Failure to comply with the

provisions of this rule does not affect the finality of the judgment.

RULE 503.2. SUMMARY DISPOSITION

(a) Motion. A party may file a sworn motion for summary disposition of all or part of a claim or defense without a trial. The motion must set out all supporting facts. All documents on

which the motion relies must be attached. The motion must be granted if it shows that:

(1) there are no genuinely disputed facts that would prevent a judgment in favor of the

party;

(2) there is no evidence of one or more essential elements of a defense which the

defendant must prove to defeat the plaintiffs claim; or

(3) there is no evidence of one or more essential elements of the plaintiff's claim.

(b) Response. The party opposing the motion may file a sworn written response to the motion.

(c) Hearing. The court must not consider a motion for summary disposition until it has been on

file for at least 14 days. By agreement of the parties, the court may decide the motion and

response without a hearing.

(d) Order. The court may enter judgment as to the entire case or may specify the facts that are

established and direct such further proceedings in the case as are just.

RULE 503.3. SETTINGS AND NOTICE; POSTPONING TRIAL

(a) Settings and Notice. After the defendant answers, the case will be set on a pretrial docket

or a trial docket at the discretion of the judge. The court must send a notice of the date, time, and place of this setting to all parties at their address of record no less than 45 days before

the setting date, unless the judge determines that an earlier setting is required in the interest of justice. Reasonable notice of all subsequent settings must be sent to all parties at their addresses of record.

(b) Postponing Trial. A party may file a sworn motion requesting that the trial be postponed.

The motion must state why a postponement is necessary. The judge, for good cause, may postpone any suit for a reasonable time.

RULE 503.4. PRETRIAL CONFERENCE

(a) Conference Set; Issues. If all parties have appeared in a suit, the court, at any party' s request or on its own, may set a case for a pretrial conference. Appropriate issues for the pretrial conference include:

(1) discovery;

(2) the amendment or clarification of pleadings;

(3) the admission of facts and documents to streamline the trial process;

(4) a limitation on the number of witnesses at trial;

(5) the identification of facts, if any, which are not in dispute between the parties;

(6) mediation or other alternative dispute resolution services;

(7) the possibility of settlement;

(8) trial setting dates that are amenable to the court and all parties;

(9) the appointment of interpreters, if needed;

(10) the application of a Rule of Civil Procedure not in Part V or a Rule of Evidence; and

(11) any other issue that the court deems appropriate.

(b) Eviction Cases. The court must not schedule a pretrial conference in an eviction case if it would delay trial.

RULE 503.5. ALTERNATIVE DISPUTE RESOLUTION

(a) State Policy. The policy of this state is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. Judges and court administrators are responsible for carrying out this policy and developing an alternative dispute resolution system to encourage peaceable resolution in all justice court suits. For that purpose, the judge may order any case to mediation or another appropriate and generally accepted

alternative dispute resolution process.

(b) Eviction Cases. The court must not order mediation or any other alternative dispute resolution process in an eviction case if it would delay trial.

RULE 503.6. TRIAL

(a) Docket Called. On the day of the trial setting, the judge must call all of the cases set for trial that day.

(b) If Plaintiff Fails to Appear. If the plaintiff fails to appear when the case is called for trial, the judge may postpone or dismiss the suit.

(c) If Defendant Fails to Appear. If the defendant fails to appear when the case is called for trial, the judge may postpone the case, or may proceed to take evidence. If the plaintiff proves its case, judgment must be awarded for the relief proven. If the plaintiff fails to prove its case, judgment must be rendered against the plaintiff.

RULE 504. JURY

RULE 504.1. JURY TRIAL DEMANDED

(a) Demand. Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before the date a case is set for trial. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause.

(b) Jury Fee. Unless otherwise provided by law, a party demanding a jury must pay a fee of $22.00 or must file a sworn statement of inability to pay the fee at or before the time the party files a written request for a jury.

(c) Withdrawal of Demand. If a party who demands a jury and pays the fee withdraws the demand, the case will remain on the jury docket unless all other parties present agree to try the case without a jury. A party that withdraws its jury demand is not entitled to a refund of the jury fee.

(d) No Demand. If no party timely demands a jury and pays the fee, the judge will try the case without a jury.

RULE 504.2. EMPANELING THE JURY

(a) Drawing Jury and Oath. If no method of electronic draw has been implemented, the judge must write the names of all prospective jurors present on separate slips of paper as nearly alike as may be, place them in a box, mix them well, and then draw the names one by one from the box. The judge must list the names drawn and deliver a copy to each of the parties or their attorneys.

(b) Oath. After the draw, the judge must swear the panel as follows: "You solemnly swear or affirm that you will give true and correct answers to all questions asked of you concerning your qualifications as a juror."

(c) Questioning the Jury. The parties or their attorneys will be allowed to question jurors as to their ability to serve impartially in the trial but may not ask the jurors how they will rule in the case. The judge will have discretion to allow or disallow specific questions and determine the amount of time each side will have for this process.

(d) Challenge for Cause. A party may challenge any juror for cause. The challenge must be made during jury questioning. The party must explain to the judge why the juror will be prejudiced or biased and must therefore be excluded from the jury. The judge must evaluate the questions and answers given and either grant or deny the challenge. When a challenge for cause has been sustained, the juror must be excused.

(e) Challenges Not for Cause. After the judge determines any challenges for cause, each party may select up to 3 jurors to excuse for any reason or no reason at all. But no prospective juror may be excused for membership in a constitutionally protected class.

(f) The Jury. After all challenges, the first 6 prospective jurors remaining on the list constitute the jury to try the case.

(g) If Jury Is Incomplete. If challenges reduce the number of prospective jurors below 6, the judge must direct the sheriff or constable to summon others and allow them to be questioned and challenged by the parties as before, until at least 6 remain.

(h) Jury Sworn. When the jury has been selected, the judge must require them to take substantially the following oath: "You solemnly swear or affirm that you will render a true

verdict according to the law and the evidence presented."

RULE 504.3. JURY NOT CHARGED

The judge must not charge the jury.

RULE 504.4. JURY VERDICT FOR SPECIFIC ARTICLES

When the suit is for the recovery of specific articles and the jury finds for the plaintiff, the jury must assess the value of each article separately, according to the evidence presented at trial.

RULE 505. JUDGMENT; NEW TRIAL

RULE 505.1. JUDGMENT

(a) Judgment Upon Jury Verdict. Where a jury has returned a verdict, the judge must announce the verdict in open court, note it in the court's docket, and render judgment accordingly.

(b) Case Tried by Judge. When a case has been tried before the judge without a jury, the judge must announce the decision in open court, note the decision in the court's docket, and render judgment accordingly.

(c) Form. A judgment must:

(1) clearly state the determination of the rights of the parties in the case;

(2) state who must pay the costs;

(3) direct the issuance of process necessary for enforcement;

(4) be signed by the judge; and

(5) be dated the date of the judge's signature.

(d) Costs. The judge must award costs allowed by law to the successful party.

(e) Judgment for Specific Articles. Where the judgment is for the recovery of specific articles, the judgment must order that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed by the judge or jury with interest at the prevailing

post-judgment interest rate.

RULE 505.2. ENFORCEMENT OF JUDGMENT

Justice court judgments are enforceable in the same method as in county and district court, except as provided by law. When the judgment is for personal property, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforce its judgment by attachment or fine.

RULE 505.3. MOTION TO SET ASIDE; MOTION TO REINSTATE; MOTION FOR NEW TRIAL

(a) Motion to Reinstate after Dismissal. A plaintiff whose case is dismissed may file a motion to reinstate the case no later than 14 days after the dismissal order is signed. The plaintiff must serve the defendant with a copy of the motion no later than the next business day using a method approved under Rule 501.4 The court may reinstate the case for good cause shown.

(b) Motion to Set Aside Default. A defendant against whom a default judgment is granted may file a motion to set aside the judgment no later than 14 days after the judgment is signed. The defendant must serve the plaintiff with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The court may set aside the judgment and set the case for trial for good cause shown.

(c) Motion for New Trial. A party may file a motion for a new trial no later than 14 days after the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The judge may grant a new trial upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party.

(d) Motion Not Required. Failure to file a motion under this rule does not affect a party's right to appeal the underlying judgment.

(e) Motion Denied as a Matter of Law. If the judge has not ruled on a motion to set aside, motion to reinstate, or motion for new trial, the motion is automatically denied at 5:00 p.m. on the 21st day after the day the judgment was signed.

RULE 506. APPEAL

RULE 506.1. APPEAL

(a) How Taken; Time. A party may appeal a judgment by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 21 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied.

(b) Amount of Bond; Sureties; Terms. Aplaintiffmustfilea$500bond. A defendant must file a bond in an amount equal to twice the amount of the judgment. The bond must be supported by a surety or sureties approved by the judge. The bond must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) Cash Deposit in Lieu of Bond. In lieu of filing a bond, an appellant may deposit with the clerk of the court cash in the amount required of the bond. The deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(d) Sworn Statement of Inability to Pay.

(1) Filing; contest. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of inability to pay. The statement must meet the requirements of Rule 502.3 and may be the same one that was filed with the petition.

(2) Contest. The statement may be contested as provided in Rule 502.3(d) within 7 days

after the opposing party receives notice that the statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 7 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 14 days and hear the contest de novo, as if there had been no previous hearing, and if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within five days, post an appeal bond or make a cash deposit in compliance with this rule.

(e) Notice to Other Parties Required. If a statement of inability to pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 7 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(f) No Default on Appeal Without Compliance With Rule. The county court to which an appeal is taken must not render default judgment against any party without first determining that the appellant has fully complied with this rule.

(g) No Dismissal of Appeal Without Opportunity for Correction. An appeal must not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing the appellant, after 7 days' notice from the court, the opportunity to correct such defect.

(h) Appeal Perfected. An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed in accordance with this rule.

(i) Costs. The appellant must pay the costs on appeal to a county court in accordance with Rule

143a.

RULE 506.2. RECORD ON APPEAL

When an appeal has been perfected from the justice court, the judge must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs,and the original papers in the case.

RULE 506.3. TRIAL DE NOVO

The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.

RULE 506.4. WRIT OF CERTIORARI

(a) Application. Except in eviction cases, after final judgment in a case tried injustice court, a party may apply to the county court for a writ of certiorari.

(b) Grounds. An application must be granted only if it contains a sworn statement setting forth facts showing that either:

(1) the justice court did not have jurisdiction; or

(2) the final determination of the suit worked an injustice to the applicant that was not caused by the applicant's own inexcusable neglect.

(c) Bond, Cash Deposit, or Sworn Statement of indigence to Pay Required. If the application is granted, a writ of certiorari must not issue until the applicant has filed a bond, made a cash deposit, or filed a sworn statement of indigence that with Rule 145.

(d) Time for Filing. An application for writ of certiorari must be filed within 90 days after the date the final judgment is signed.

(e) Contents of Writ. The writ of certiorari must command the justice court to immediately make and certify a copy of the entries in the case on the docket, and immediately transmit the transcript of the proceedings in the justice court, together with the original papers and

a bill of costs, to the proper court.

(f) Clerk to Issue Writ and Citation. When the application is granted and the bond, cash deposit,

or sworn statement of indigence have been filed, the clerk must issue a writ of certiorari to

the justice court and citation to the adverse party.

(g) Stay of Proceedings. When the writ of certiorari is served on the justice court, the court must stay further proceedings on the judgment and comply with the writ.

(h) Cause Docketed. The action must be docketed in the name of the original plaintiff, as

plaintiff, and of the original defendant, as defendant.

(i) Motion to Dismiss. Within 30 days after the service of citation on the writ of certiorari, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in

the affidavit, or for want of sufficient bond. If the certiorari is dismissed, the judgment must

direct the justice court to proceed with the execution of the judgment below.

(j) Amendment ofBond or Oath. The affidavit or bond may be amended at the discretion of the

court in which it is filed.

(j) Trial De Novo. The case must be tried de novo in the county court and judgment must be

rendered as in cases appealed from justice courts. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.

RULE 507. ADMINISTRATIVE RULES FOR JUDGES AND COURT PERSONNEL

RULE 507.1. PLENARY POWER

A justice court loses plenary power over a case when an appeal is perfected or if no appeal is

perfected, 21 days after the later of the date judgment is signed or the date a motion to set aside,

motion to reinstate, or motion for new trial, if any, is denied. In an eviction case for nonpayment of rent that is appealed by filing a statement of inability to pay, the court's plenary power is extended for 7 days beyond the date the appeal is perfected.

RULE 507.2. FORMS

The court may provide forms to enable a party to file documents that comply with these rules. No party may be forced to use the court's forms.

RULE 507.3. DOCKET AND OTHER RECORDS

(a) Docket. Each judge must keep a civil docket, which may be maintained electronically, containing the following information:

(1) the title of all suits commenced before the court;

(2) the date when the first process was issued against the defendant, when returnable, and the nature of that process;

(3) the date when the parties, or either of them, appeared before the court, either with or without a citation;

(4) a description of the petition and any documents filed with the petition;

(5) every adjournment, stating at whose request and to what time;

(6) the date of the trial, stating whether the same was by a jury or by the judge;

(7) the verdict of the jury, if any;

(8) the judgment signed by the judge and the date the judgment was signed;

(9) all applications for setting aside judgments or granting new trials and the orders of the judge thereon, with the date;

(10) the date of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs and, when any execution is returned, the date of the return and the manner in which it was executed; and

(11) all stays and appeals that may be taken, and the date when taken, the amount of the bond and the names of the sureties.

(b) Other Records. The judge must also keep copies of all documents filed and such other dockets, books, and records as may be required by law or these rules, and must keep a fee book in which all costs accruing in every suit commenced before the court are taxed.

RULE 507.4. ISSUANCE OF WRITS

Every writ from the justice courts must be in writing and be issued and signed by the judge officially. The style thereof must be "The State of Texas." It must, except where otherwise specially provided by law or these rules, be directed to the person or party upon whom it is to be served, be made returnable to the court, and note the date of its issuance.

RULE 508. DEBT CLAIM CASES

RULE 508.1. APPLICATION

Rule 508 applies to a claim for the recovery of a debt brought by an assignee of a claim, a financial institution, a debt collector or collection agency, or a person or entity primarily engaged in the business of lending money at interest.

RULE 508.2. PETITION

(a) Contents. In addition to the information required by Rule 502.2, a petition filed in a suit governed by this rule must contain the following information:

(1) Credit Accounts. In a claim based upon a credit card, revolving credit, or open account, the petition must state:

(A) the account or card name;

(B) the account number (which may be masked);

(C) the date of issue or origination of the account, if known;

(D) the date of charge-off or breach of the account, if known;

(E) the amount owed as of a date certain; and

(F) whether the plaintiff seeks ongoing interest.

(2) Personal and Business Loans. In a claim based upon a promissory note or other promise to pay a specific amount as of a date certain, the petition must state:

(A) the date and amount of the original loan;

(B) whether the repayment of the debt was accelerated;

(C) the date final payment was due;

(D) the amount due as of the final payment date;

(E) the amount owed as of a date certain; and

(F) whether plaintiff seeks ongoing interest.

(3) Ongoing Interest. If a plaintiff seeks ongoing interest, the petition must state:

(A) the effective interest rate claimed;

(B) whether the interest rate is based upon contract or statute; and

(C) the dollar amount of interest claimed as of a date certain.

(4) Assigned Debt. If the debt that is the subject of the claim has been assigned or transferred, the petition must state:

(A) that the debt claim has been transferred or assigned;

(B) the date of the transfer or assignment;

(C) the name of any prior holders of the debt; and

(D) the name or a description of the original creditor.

RULE 508.3. DEFAULT JUDGMENT

(a) Generally. If the defendant does not file an answer to a claim by the answer date or otherwise appear in the case, the judge must promptly render a default judgment upon the plaintiffs proof of the amount of damages.

(b) Proof of the Amount of Damages.

(1) Evidence Must Be Served or Submitted. Evidence of plaintiff s damages must either be attached to the petition and served on the defendant or submitted to the court after defendant's failure to answer by the answer date.

(2) Form of Evidence. Evidence of plaintiffs damages may be offered in a sworn statement or in live testimony.

(3) Establishment of the Amount of Damages. The amount of damages is established

by evidence:

(A) that the account or loan was issued to the defendant and the defendant is obligated to pay it;

(B) that the account was closed or the defendant breached the terms of the account or loan agreement;

(C) of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and

(D) that the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

(4) Documentary Evidence Offered By Sworn Statement. Documentary evidence may be considered if it is attached to a sworn statement made by the plaintiff or its representative, a prior holder of the debt or its representative, or the original creditor or its representative, that attests to the following:

(A) the documents were kept in the regular course of business;

(B) it was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;

(C) the documents were created at or near the time or reasonably soon thereafter; and

(D) the documents attached are the original or exact duplicates of the original.

(5) Consideration of Sworn Statement. A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation indicate lack of trustworthiness. But a judge may not reject a sworn statement only because it is not made by the original creditor.

(c) Hearing. The judge may enter a default judgment without a hearing if the plaintiff submits sufficient written evidence of its damages and should do so to avoid undue expense and

delay. Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

(d) Appearance. If the defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not render a default judgment and must set the case for trial.

(e) Post-Answer Default. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

RULE 509. PROCEEDINGS TO ENFORCE LANDLORD'S DUTY TO REPAIR OR REMEDY RESIDENTIAL RENTAL PROPERTY

RULE 509.1. APPLICABILITY OF RULE

Rule 509 applies to a suit filed in a justice court by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant.

RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) Contents of Petition. The petition must be in writing and must include the following:

(1) the street address of the residential rental property;

(2) a statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company;

(3) to the extent known and applicable, the name, business street address, and telephone number of the landlord and the landlord's management company, on-premises manager, and rent collector serving the residential rental property;

(4) for all notices the tenant gave to the landlord requesting that the condition be

repaired or remedied:

(A) the date of the notice;

(B) the name of the person to whom the notice was given or the place where the notice was given;

(C) whether the tenant's lease is in writing and requires written notice;

(D) whether the notice was in writing or oral;

(E) whether any written notice was given by certified mail, return receipt requested, or by registered mail; and

(F) whether the rent was current or had been timely tendered at the time notice was given;

(5) a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;

(6) a statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

(7) if the petition includes a request to reduce the rent:

(A) the amount of rent paid by the tenant, the amount of rent paid by the government, if known, the rental period, and when the rent is due; and

(B) the amount of the requested rent reduction and the date it should begin;

(8) a statement that the total relief requested does not exceed $ 10,000, excluding interest and court costs but including attorney's fees; and

(9) the tenant's name, address, and telephone number.

(b) Copies. The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.

(c) Forms and Amendments. A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition unless the tenant

is given an opportunity to correct the defect and does not promptly correct it.

RULE 509.3. CITATION: ISSUANCE; APPEARANCE DATE; ANSWER

(a) Issuance. When the tenant files a written petition with a justice court, the judge must immediately issue citation directed to the landlord, commanding the landlord to appear before such judge at the time and place named in the citation.

(b) Appearance Date; Answer. The appearance date on the citation must not be less than 10 days nor more than 21 days after the petition is filed. For purposes of this rule, the appearance date on the citation is the trial date. The landlord may, but is not required to, file a written answer on or before the appearance date.

RULE 509.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF CITATION

(a) Service and Return of Citation. The sheriff, constable, or other person authorized by Rule 501.2 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least 6 days before the appearance date. At least one day before the appearance date, the person serving the citation must file a return of service with the court that issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

(b) Alternative Service of Citation.

(1) If the petition does not include the landlord's name and business street address, or if, after making diligent efforts on at least two occasions, the officer or authorized person is unsuccessful in serving the citation on the landlord under (a), the officer or authorized person must serve the citation by delivering a copy of the citation, petition, and any attachments to:

(A) the landlord's management company if the tenant has received written notice of the name and business street address of the landlord's management company; or

(B) if (b)(l)(A) does not apply and the tenant has not received the landlord's name and business street address in writing, the landlord's authorized agent

for service of process, which may be the landlord's management company,

on-premise manager, or rent collector serving the residential rental property.

(2) If the officer or authorized person is unsuccessful in serving citation under (b)(l)

after making diligent efforts on at least two occasions at either the business street

address of the landlord's management company, if (b)(l)(A) applies, or at each

available business street address of the landlord's authorized agent for service of

process, if (b)(l)(B) applies, the officer or authorized person must execute and file

in the justice court a sworn statement that the officer or authorized person made

diligent efforts to serve the citation on at least two occasions at all available business

street addresses of the landlord and, to the extent applicable, the landlord's

management company, on-premises manager, and rent collector serving the residential rental property, providing the times, dates, and places of each attempted service. The judge may then authorize the officer or authorized person to serve citation by:

(A) delivering a copy of the citation, petition, and any attachments to someone

over the age of 16 years, at any business street address listed in the petition,

or, if nobody answers the door at a business street address, either placing the

citation, petition, and any attachments through a door mail chute or slipping

them under the front door, and if neither of these latter methods is practical,

affixing the citation, petition, and any attachments to the front door or main

entry to the business street address;

(B) within 24 hours of complying with (b)(2)(A), sending by first class mail a

true copy of the citation, petition, and any attachments addressed to the

landlord at the landlord's business street address provided in the petition; and

(C) noting on the return of the citation the date of delivery under (b)(2)(A) and

the date of mailing under (b)(2)(B).

The delivery and mailing to the business street address under (b)(2)(A)-(B) must occur at

least 6 days before the appearance date. At least one day before the appearance date, a return

of service must be completed and filed in accordance with Rule 501.3 with the court that issued the citation. It is not necessary for the tenant to request the alternative service authorized by this rule.

RULE 509.5. DOCKETING AND TRIAL; FAILURE TO APPEAR

(a) Docketing and Trial. The case must be docketed and tried as other cases. The judge may develop the facts of the case in order to ensure justice.

(b) Failure to Appear.

(1) If the tenant appears at trial and the landlord has been duly served and fails to appear at trial, the judge may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the judge must render judgment against the landlord in accordance with the evidence.

(2) If the tenant fails to appear for trial, the judge may dismiss the suit.

RULE 509.6. JUDGMENT: AMOUNT; FORM AND CONTENT; ISSUANCE AND SERVICE; FAILURE TO COMPLY

(a) Amount. Judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property if the total judgment does not exceed $10,000, excluding interest and court costs but including attorney's fees. Any party who prevails in a suit brought under these rules may recover the party's court costs and reasonable attorney' s fees as allowed by law.

(b) Form and Content.

(1) The judgment must be in writing, signed, and dated and must include the names of the parties to the proceeding and the street address of the residential rental property where the condition is to be repaired or remedied.

(2) In the judgment, the judge may:

(A) order the landlord to take reasonable action to repair or remedy the condition;

(B) order a reduction in the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(C) award a civil penalty of one month's rent plus $500;

(D) award the tenant's actual damages; and

(E) award court costs and attorney's fees, excluding any attorney's fees for a claim for damages relating to a personal injury.

(3) If the judge orders the landlord to repair or remedy a condition, the judgment must include in reasonable detail the actions the landlord must take to repair or remedy the condition and the date when the repair or remedy must be completed.

(4) If the judge orders a reduction in the tenant's rent, the judgment must state:

(A) the amount of the rent the tenant must pay, if any;

(B) the frequency with which the tenant must pay the rent;

(C) the condition justifying the reduction of rent;

(D) the effective date of the order reducing rent;

(E) that the order reducing rent will terminate on the date the condition is repaired or remedied; and

(F) that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 501.4, that the condition justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

(c) Issuance and Service. The judge must issue the judgment. The judgment may be served on the landlord in open court or by any means provided in Rule 501.4 at an address listed in the citation, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the judge serves the landlord in open court or by other means provided in Rule 501.4, the sheriff, constable, or other authorized person who serves the

landlord must promptly file a return of service in the justice court.

(d) Failure to Comply. If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, the failure is grounds for citing the landlord for contempt of court under Section 21.002 of the Texas Government Code.

RULE 509.7. COUNTERCLAIMS

Counterclaims and the joiner of suits against third parties are not permitted in suits under these rules. Compulsory counterclaims may be brought in a separate suit. Any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded.

RULE 509.8. APPEAL: TIME AND MANNER; PERFECTION; EFFECT; COSTS; TRIAL ON APPEAL

(a) Time and Manner. Either party may appeal the decision of the justice court to a statutory county court or, if there is no statutory county court with jurisdiction, a county court or district court with jurisdiction by filing a written notice of appeal with the justice court within 21 days after the date the judge signs the judgment. If the judgment is amended in any respect, any party has the right to appeal within 21 days after the date the judge signs the new judgment, in the same manner set out in this rule.

(b) Perfection. The posting of an appeal bond is not required for an appeal under this rule, and the appeal is considered perfected with the filing of a notice of appeal. Otherwise, the appeal is in the manner provided by law for appeal from a justice court.

(c) Effect. The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions.

(d) Costs. The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

(e) Trial on Appeal. On appeal, the parties are entitled to a trial de novo. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. Either

party is entitled to trial by jury on timely request and payment of a fee, if required. An appeal of a judgment of a justice court under these rules takes precedence in the county court and may be held at any time after the eighth day after the date the transcript is filed in the county court.

RULE 509.9. EFFECT OF WRIT OF POSSESSION

If a judgment for the landlord for possession of the residential rental property becomes final, any order to repair or remedy a condition is vacated and unenforceable.

RULE 510. EVICTION CASES

RULE 510.1. APPLICATION

Rule 510 applies to a suit to recover possession of real property under Chapter 24 of the Texas Property Code.

RULE 510.2. COMPUTATION OF TIME FOR EVICTION CASES

Rule 500.5 applies to the computation of time in eviction case. But if a document is filed by mail and not received by the court by the due date, the court may take any action authorized by these rules, including issuing a writ of possession requiring a tenant to leave the property.

RULE 510.3. PETITION

(a) Contents. In addition to the requirements of Rule 502.2, a petition in an eviction case must be sworn to by the plaintiff and must contain:

(1) a description, including the address, if any, of the premises that the plaintiff seeks possession of;

(2) a description of the facts and the grounds for eviction;

(3) a description of when and how notice to vacate was delivered;

(4) the total amount of rent due and unpaid at the time of filing, if any; and

(5) a statement that attorney fees are being sought, if applicable.

(b) Where Filed. The petition must be filed in the precinct where the premises is located. If it is filed elsewhere, the judge must dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

(c) Defendants Named. If the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises whom plaintiff seeks to evict. No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and served with citation.

(d) Claim for Rent. A claim for rent within the justice court's jurisdiction may be asserted in an eviction case.

(e) Only Issue. The court must adjudicate the right to actual possession and not title. Counterclaims and the joiner of suits against third parties are not permitted in eviction cases. A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction.

RULE 510.4. ISSUANCE, SERVICE, AND RETURN OF CITATION

(a) Issuance of Citation; Contents. When a petition is filed, the court must immediately issue citation directed to each defendant. The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) state the date of filing of the petition;

(5) state the date of issuance of the citation;

(6) state the file number and names of parties;

(7) state the plaintiffs cause of action and relief sought;

(8) be directed to the defendant;

(9) state the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;

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

(11) notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition;

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

(13) contain all warnings required by Chapter 24 of the Texas Property Code; and

(14) include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(b) Service and Return of Citation.

(1) Who May Serve. Unless otherwise authorized by written court order, citation must be served by a sheriff or constable.

(2) Method of Service. The constable, sheriff, or other person authorized by written court order receiving the citation must execute it by delivering a copy with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached with some person, other than the plaintiff, over the age of 16 years, at the defendant's usual place of residence, at least 6 days before the day set for trial.

(3) Return of Service. At least one day before the day set for trial, the constable, sheriff, or other person authorized by written court order must complete and file a return of service in accordance with Rule 501.3 with the court that issued the citation.

(c) Alternative Service by Delivery to the Premises.

(1) When Allowed. The citation may be served by delivery to the premises if:

(A) the constable, sheriff, or other person authorized by written court order is unsuccessful in serving the citation under (b);

(B) the petition lists all home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; and

(C) the constable, sheriff, or other person authorized files a sworn statement that it has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located, stating the times and places of attempted service.

(2) Authorization. The judge must promptly consider a sworn statement filed under (1)(C) and determine whether citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service.

(3) Method. If the judge authorizes service by delivery to the premises, the constable, sheriff, or other person authorized by written court order must, at least 6 days before the day set for trial:

(A) deliver a copy of the citation with a copy of the petition attached to the premises by placing it through a door mail chute or slipping it under the front door; if neither method is possible, the officer may securely affix the citation to the front door or main entry to the premises; and

(B) deposit in the mail a copy of the citation with a copy of the petition attached, addressed to defendant at the premises and sent by first class mail.

(4) Notation on Return. The constable, sheriff, or other person authorized by written court order must note on the return of service the date the citation was delivered and the date it was deposited in the mail.

RULE 510.5. REQUEST FOR IMMEDIATE POSSESSION

(a) Immediate Possession Bond. The plaintiff may, at the time of filing the petition or at any time prior to final judgment, file a possession bond to be approved by the judge in the probable amount of costs of suit and damages that may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages that are adjudged against plaintiff.

(b) Notice to Defendant. The court must notify a defendant that the plaintiff has filed a possession bond. The notice must be served in the same manner as service of citation and must inform the defendant that if the defendant does not file an answer or appear for trial, and judgment for possession is granted by default, an officer will place the plaintiff in possession of the property on or after the 7th day after the date defendant is served with the notice.

(c) Time for Issuance and Execution of Writ. If judgment for possession is rendered by default and a possession bond has been filed, approved, and served under this rule, a writ of possession must issue immediately. The writ must not be executed before the 7th day after the date defendant is served with notice under (b).

(c) Effect of Appearance. If the defendant files an answer or appears at trial, no writ of possession may issue before the 6th day after the date a judgment for possession is signed.

RULE 510.6. TRIAL DATE; ANSWER; DEFAULT JUDGMENT

(a) Trial Date and Answer. The defendant must appear for trial on the day set for trial in the citation. The defendant may, but is not required to, file a written answer with the court on or before the day set for trial in the citation.

(b) Default Judgment. If the defendant fails to appear at trial and fails to file an answer before the case is called for trial, the allegations of the complaint must be taken as admitted and judgment by default rendered accordingly. If a defendant who has answered fails to appear

for trial, the court may proceed to hear evidence and render judgment accordingly.

(c) Notice of Default. When a default judgment is signed, the clerk must immediately mail written notice of the judgment by first class mail to the defendant at the address of the premises.

RULE 510.7. TRIAL

(a) Trial. An eviction case will be docketed and tried as other cases. No eviction trial may be held less than 6 days after service under Rule 510.4 has been obtained.

(b) Jury Trial Demanded. Any party may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. The demand must be accompanied by payment of a jury fee or by filing a sworn statement of inability to pay the jury fee. If a jury is demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If no jury is timely demanded by either party, the judge will try the case.

(c) Limit on Postponement. Trial in an eviction suit must not be postponed more than once or for more than 7 days unless both parties agree in writing.

RULE 510.8. JUDGMENT; WRIT; NO NEW TRIAL

(a) Judgment for Plaintiff. If the judgment or verdict is in favor of the plaintiff, the judge must render judgment for plaintiff for possession of the premises, costs, delinquent rent up to the date of entry of judgment, if any, and attorney fees if recoverable by law.

(b) Judgment for Defendant. If the judgment or verdict is in favor of the defendant, the judge must render judgment for defendant against the plaintiff for costs and attorney fees if recoverable by law.

(c) Writ. If the judgment or verdict is in favor of the plaintiff, the judge must award a writ of possession upon demand of the plaintiff and payment of any required fees.

(1) Time to Issue. No writ of possession may issue before the sixth day after the date the judgment is signed, except as provided by Rule 510.5. A writ of possession may

not be issued or executed after the 90th day after a judgment for possession is signed.

(2) Effect of Appeal. A writ of possession must not issue if an appeal is perfected and,

if applicable, rent is paid into the registry, as required by these rules.

(d) No Motion For New Trial. No motion for new trial may be filed.

RULE 510.9. APPEAL

(a) How Taken; Time. A party may appeal a judgment in an eviction case by filing a bond,

making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 5 days after the judgment is signed.

(b) Amount of Security; Terms. The justice court judge will set the amount of the bond or cash

deposit to include the items enumerated in Rule 510.11. The bond or cash deposit must be

payable to the appellee and must be conditioned on the appellant's prosecution of its appeal

to effect and payment of any judgment and all costs rendered against it on appeal.

(c) Sworn Statement of Inability to Pay.

(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount

required may instead file a sworn statement of inability to pay. The statement must

meet the requirements of Rule 502.3.

(2) Contest. The statement may be contested as provided in Rule 5 02.3 (d) within 5 days

after the opposing party receives notice that the statement was filed.

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(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal

that decision by filing notice with the justice court within 5 days of that court's

written order. The justice court must then forward all related documents to the

county court for resolution. The county court must set the matter for hearing within

5 days and hear the contest de novo, as if there had been no previous hearing, and,

if the appeal is granted, must direct the justice court to transmit to the clerk of the

county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within one business day, post an appeal bond or make a cash deposit in compliance with this rule.

(5) Payment of Rent in Nonpayment of Rent Appeals.

(A) Notice. If a defendant appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay, the justice court must provide to the defendant a written notice at the time the statement is filed that contains the following information in bold or conspicuous type:

(i) the amount of the initial deposit of rent, equal to one rental period's rent under the term of the rental agreement, that the defendant must pay into the justice court registry;

(ii) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(iii) the calendar date by which the initial deposit must be paid into the justice court registry, which must be within 5 days of the date the sworn statement of inability to pay is filed; and

(iv) a statement that failure to pay the required amount into the justice court registry by the required date may result in the court issuing a writ of possession without hearing.

(B) Defendant May Remain in Possession. A defendant who appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:

(i) Within 5 days of the date that the defendant files a sworn statement

of inability to pay, it must pay into the justice court registry the amount set forth in the notice provided at the time the defendant filed the statement. If the defendant fails to pay the designated amount into the justice court registry within 5 days and the transcript has not been transmitted to the county clerk, the landlord is entitled, upon request and payment of the applicable fee, to a writ of possession, which the justice court must issue immediately and without hearing.

(ii) During the appeal process as rent becomes due under the rental agreement, the defendant must pay the designated amount into the county court registry within 5 days of the rental due date under the terms of the rental agreement. If a government agency is responsible for all or a portion of the rent, the defendant must pay only that portion of the rent determined by the justice court to be paid during appeal. Either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by filing a contest within 5 days after the judgment is signed. If a contest is filed, the justice court must notify the parties and hold a hearing on the contest within 5 days. If the defendant objects to the justice court's ruling at the hearing, the defendant is required to pay only the portion claimed to be owed by the defendant until the issue is tried in county court.

(iii) If the defendant fails to pay the designated amount into the court registry within the time limits prescribed by these rules, the plaintiff may file a notice of default in county court. Upon sworn motion and a showing of default, the court must issue a writ of possession.

(iv) The plaintiff may withdraw any or all rent in the county court registry

upon sworn motion and hearing, prior to final determination of the case, showing just cause; dismissal of the appeal; or order of the court after final hearing.

(v) All hearings and motions under this subparagraph are entitled to precedence in the county court.

(d) Notice to Other Parties Required. If a statement of inability to pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 5 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(e) No Default on Appeal Without Compliance With Rule. No judgment may be taken by default against the adverse party in the court to which the case has been appealed without first showing substantial compliance with this rule.

(f) Appeal Perfected. An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed in accordance with this rule.

RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO

(a) Preparation and Transmission of Record. When an appeal has been perfected, the judge must stay all further proceedings on the judgment except as provided by these rules and must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the court registry, including sums tendered pursuant to Rule 510.9(c)(5)(B).

(b) Docketing; Notice. The county clerk must docket the case and must immediately notify the parties of the date of receipt of the transcript and the docket number of the case. The notice must advise the defendant that it must file a written answer in the county court within 8 days if one was not filed in the justice court.

(c) Trial De Novo. The case must be tried de novo in the county court. A trial de novo is a new

trial in which the entire case is presented as if there had been no previous trial. The trial, as well as any hearings and motions, is entitled to precedence in the county court.

RULE 510.11. DAMAGES ON APPEAL

On the trial of the case in the county court the appellant or appellee will be permitted to plead, prove and recover his damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and attorney fees in the justice and county courts provided, as to attorney fees, that the requirements of Section 24.006 of the Texas Property Code have been met. Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties

on the appeal bond in cases where the adverse party has executed an appeal bond.

RULE 510.12. JUDGMENT BY DEFAULT ON APPEAL

An eviction case appealed to county court will be subject to trial at any time after the expiration of 8 days after the date the transcript is filed in the county court. If the defendant has filed a written answer in the justice court, it must be taken to constitute his appearance and answer in the county court and may be amended as in other cases. If the defendant made no answer in writing in the justice court and fails to file a written answer within 8 days after the transcript is filed in the county court, the allegations of the complaint may be taken as admitted and judgment by default may be entered accordingly.

RULE 510.13. WRIT OF POSSESSION ON APPEAL

The writ of possession, or execution, or both, will be issued by the clerk of the county court

according to the judgment rendered, and the same will be executed by the sheriff or constable, as in other cases. The judgment of the county court may not be stayed unless within 10 days from the

judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to

Section 24.007 of the Texas Property Code.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (2/0)

CAUSE NUMBER *(FOR CLERK USE ONLY):*

STYLED

(e.g.. John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information

sheet: 2. Names of parties in case:

Name: Telephone: Plaintiff(s):

Address: Fax:

Defendant(s):

City/State/Zip: State Bar No:

Email:

[Attach additional page as necessary to list all parties]

Signature:

3. Indicate case type, or identify the most important issue in the case *(select only 1):*

D *Debt Claim.* A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than $10,000 in damages, excluding statutory interest and court costs but including attorney fees, if any.

D *Eviction:* An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not

more than $10,000, including costs and attorney fees, if any.

D *Repair and Remedy:* A repair and remedy case is a lawsuit brought to seek judicial remedy for the alleged failure of a landlord to remedy or repair a condition as required by Chapter 92 of the Texas Property Code. The relief sought can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.

D *Small Claims:* A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property. The claim can be for no more than $10,000 excluding statutory interest and court costs but including attorney fees, if any.

CHAPTER 4
COURT COSTS
LOCAL GOVERNMENT CODE

118.131 - Fees Set by Commissioners Court

(a) The commissioners court of a county may set reasonable fees to be charged for services by the offices of the sheriff and constables.
(b) The commissioners court may not set fees higher than is necessary to pay the expenses of providing the services.
(c) The commissioners court may not set fees under this section more than once during any one-year period.
(d) The commissioners court must set the fees before October 1 of each year to be effective January 1 of the following year.
(e) A notice setting out the fees shall be posted in the same manner in which notices are posted under Section 81.007 and shall be posted in the offices of the county officials who are authorized to charge the fee.
(f) On or before October 15 of the year in which the fees are initially set, the commissioners court shall provide written notice of the amounts of the fees to the comptroller. If the commissioners court changes the amount of a fee set under this

section, the commissioners court shall provide to the comptroller, on or before October 15 of the year in which the amount is changed, a written notice of the change in the amount of the fee. Before December 15 of each year, the comptroller shall compile the fee information provided by counties and send the compilation to:
1. the commissioners court of each county in this state;
2. any statewide association of counties, or
3. officers of counties that requests in writing before December 15 to be informed; and
4. the State Bar of Texas.
(g) A commissioners court that receives a notice under Subsection (f)(1) shall furnish the notice to its district clerk, county clerk, justices of the peace, sheriff, and constables.
(h) If the commissioners court does not set fees under this section, the fees for services by the offices of the sheriff and constable are those fees provided by law in effect on August 31, 1981.
(i) The commissioners court may not assess an applicant a fee in connection with the filing, serving, or entering of a protective order. A fee may not be charged to an applicant to dismiss, modify or withdraw a protective order.

118.132 - Service of Process for Appellate Court

A sheriff shall collect the same fee for service of process issued by the Supreme Court or a Court of Appeals as the fee provided for service of process issued by a District Court.

118.134 - Payment of Costs Incurred for Care of Certain Property

(a) A sheriff or constable may keep possession of property legally acquired until the party seeking to replevy the property pays the officer's costs incurred for the storage, security, or management of the property.
(b) Subsection (a) of this section does not apply to costs incurred on property seized in conjunction with an offense alleged under the Penal Code, Code of Criminal Procedure, or Title 116, Vernon's Texas Civil Statutes, when the owner of the property is subsequently found to be not guilty of an offense or other proscribed activity described in those statutes or if other charges whether criminal or civil are dropped.

SUMMARY ANALYSIS
LOCAL GOVERNMENT CODE
FEES OF SHERIFF AND CONSTABLE

The sheriff should notify the commissioners court, some time in July or August of each year, of his costs to serve civil process in order to enable the court to set reasonable civil process fees. If there has been no change the commissioners court should also be notified.
1. the commissioners court may not set fees higher than is necessary to pay the expenses of providing civil process service.
2. the commissioners court cannot set fees for criminal process service as the fees are set by the legislature. Camacho v. Samaniego, 831 S.W.2d 804, OpAtty.Gen. JM-880.
3. the commissioners court, after initially setting civil fees for the sheriffs and constables, must set new or amended fees before October 1, of each year to be effective January 1, of the following year.
4. the commissioners court can set civil process fees only once each year.
5. notice of setting fees shall be posted in the office of county officials who are authorized to charge the fee.

6. on or before October 15 of the year in which the fees are initially set, the commissioners court shall provide written notice of the amounts of the fees to the comptroller.
7. on or before October 15 of the year in which the amount is changed, the commissioners court shall provide written notice of the amounts of the fees to the comptroller.
8. comptroller shall compile the fee information provided by the counties and send the compilation to:
a. commissioners court of each county in this state
b. any statewide association of counties or of officers of counties that request in writing before December 15 to be informed.
c. State Bar of Texas
9. commissioners court that receives a notice under Subsection (f)(1) shall furnish a notice to its district clerk, county clerk, justices of the peace, sheriff , and constable.
10. failure to set fees in civil matters by commissioner court - sheriff & constable are required to charge those fees provided by law in effect on August 31, 1981.
11. commissioners court may not set fees, under this section, in connection with the filing, serving, or entering of a protective order, nor a fee to dismiss, modify, or withdraw a protective order.
12. sheriff entitle to same fee for service of process issued by the Supreme Court or court of appeals as that of the district court.
NOTE: Commissioners Court may set reasonable fees for services performed by sheriffs and constables in unsuccessful attempt to serve civil process.
Op.Atty.Gen JM 1046.
13. a sheriff or constable may keep possession of property legally acquired until the party seeking to replevy (obtain possession) of the property pays the officer's costs incurred for:
a. storage
b. security, or
c. management of the property
EXCEPTION
The above cost does not apply on property seized in conjunction with an offense alleged under Penal Code, Code of Criminal Procedure, or Title 116, Vernon's Texas Civil Statutes when owner of the property is found to be not guilty of an offense or other proscribed activity, or if other charges whether criminal or civil are dropped.
NOTE: It is important for the officer to keep a paper trail of the property legally acquired. Where it is stored; Inventory, including damages to property; Name, location of storage company, phone number and any other information that you deem necessary to have full control over this property; Name of the owner, his address and phone number. If it is kept in the property room of the sheriff's office the same procedure should apply.

CHAPTER 5
PAPER TRAIL

As the designated process server you should be thinking about developing a permanent filing system that will reflect how you keep track of each process paper you receive. Without a paper trail you will find it most difficult to keep track of what you are doing and when something must be done. Papers have to be served within a reasonable time and it is up to you to make it happen in a legal way.

Before implementation of the over the counter data programs you should examine them carefully to make sure all legal requirements are met for keeping your records. Pay special attention to the built in accounting programs. You have legal requirement in civil law the dictate when and to whom civil payments are made.

It is suggested that you use a computer to file the information that you receive from the process. It then can be easily accessed by you. As a minimum I would want the following extracted from the process paper you receive as follows:

1. Case Number
2. Plaintiff's attorney's name, address and phone number
3. If no attorney involved, then the name, address and phone number of plaintiff
4. Defendant's Attorney's name, address and phone number
5. The type of process received (Execution, citation, etc)
6. Date process papers were received. (Process papers should be stamped with the date and time showing when the papers were received)
7. Date, time and person whom process papers were served
8. If unable to locate defendant, then whom did you contact to try and find his address. What diligence did you use?
9. Copy information you made on the return.
10. Any conversation with parties involved.
11. Date process papers were returned and to whom.
12. Fees charged.
13. If you recovered property - what did you do with it?
14. Where is property stored?
15. Is property insured or under proper storage conditions?
16. Did you inventory the property, if personal?
17. If it were a number of items did you photograph the personal property?
18. Was a replevy bond used, and if so, who signed and approved the replevy bond?
19. Date on which process must be returned to the court within, 30, 60, or 90 days?

NOTE: THIS IS JUST SOME OF THE INFORMATION THAT YOU MIGHT WANT TO ENTER ON YOUR COMPUTER. BE SURE AND BACK UP THIS INFORMATION EVERY DAY.

IF YOU DON'T HAVE A COMPUTER YOU COULD SET UP HANDWRITTEN FILES TO PROVIDE THE SAME INFORMATION.

CHAPTER 6
CIVIL PRACTICE & REMEDIES CODE

Post judgment writs are issued based on court judgments. If for some reason you think there is a problem with the writ you should contact the plaintiff's attorney and request a copy of the judgment if one is not attached. If there appears to be a simple typo contact the clerk that issued the writ. If there appears to be a legal problem with the writ you should contact your contact your County/District Attorney for clarification and guidance. Remember your primary duty, is to deliver or execut the writ and to carry out the direction of the court. The excerpts taken from the Texas Practice and Remedies Code are most important as well as the other information contained in this manual. This manual does not answer all questions but should be a help to you in serving process.

EXECUTION OF JUDGMENTS
TEXAS PRACTICE AND REMEDIES CODE
ISSUANCE AND LEVY OF WRIT

34.001 - No Execution on Dormant Judgment

(a) If a writ of execution is not issued within 10 years after the rendition of a judgment of a court of record or a justice court, the judgment is dormant and execution may not be issued on the judgment unless it is revived.

(b) If a writ of execution is issued within 10 years after rendition of a judgment but a second writ is not issued within 10 years after issuance of the first writ, the judgment becomes dormant. A second writ may be issued at any time within 10 years after issuance of the first writ.

(c) This section does not apply to a judgment for child support under the family code.

34.002 - Effect of Plaintiff's Death

(a) If a plaintiff dies after judgment, any writ of execution must be issued in the name of the plaintiff's legal representative, if any, and in the name of any other plaintiff. An affidavit of death and a certificate of appointment of the legal representative, given under the hand and seal of the clerk of the appointing court, must be filed with the clerk of the court issuing the writ of execution.

(b) If a plaintiff dies after judgment and his estate is not administered, the writ of execution must be issued in the name of all plaintiffs shown in the judgment. An affidavit showing that administration of the estate is unnecessary must be filed with the clerk of the court that rendered judgment. Money collected under the execution shall be paid into the registry of the court, and the court shall order the money partitioned and paid to the parties entitled to it.

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

34.003 - Effect of Defendant's Death

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

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34.004 - Levy on Property Conveyed to Third Party

Property that the judgment debtor has sold, mortgaged, or conveyed in trust may not be seized in execution if the purchaser, mortgagee, or trustee points out other property of the debtor in the county that is sufficient to satisfy the execution.

34.005 - Levy on Property of Surety

(a) If the face of a writ of execution or the endorsement of the clerk shows that one of the persons against whom it is issued is surety for another, the officer must first levy on the

principal's property that is subject to execution and is located in the county in which the judgment is rendered.
(b) If property of the principal cannot be found that, in the opinion of the officer, is sufficient to satisfy the execution, the officer shall levy first on the principal's property that can be found and then on as much of the property of the surety as is necessary to satisfy the execution.

RECOVERY OF SEIZED PROPERTY

34.021 - Recovery of Property before Sale

A person is entitled to recover his property that has been seized through execution of a writ issued by the court if he judgment on which execution is issued is reversed or set aside and the property has not been sold at execution.

34.022 - Recovery of Property Value After Sale

(a) A person is entitled to recover from the judgment creditor the market value of the person's property that has been seized through execution of a writ issued by a court if the judgment on which execution is issued is reversed or set aside but the property has been sold at execution.
(b) The amount of recover is determined by the market value at the time of sale of the property sold.

SALE

34.041 - Sale at Place Other Than Courthouse Door

If the public sale of land is required by law to be made at a place other than the courthouse door, sales under this chapter shall be made at the place designated by law.

34.042 - Sale of City Lots

If real property taken in execution consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel must be offered for sale separately unless not susceptible to separate sale because of the character of improvements.

34.043 - Sale of Rural Property

(a) If real property taken in execution is not located in a city or town, the defendant in the writ who holds legal or equitable title to the property may divide the property into lots of not less than 50 acres and designate the order in which those lots shall be sold.
(b) The defendant must present to the executing officer:
(1) a plat of the property as divided and as surveyed by the county surveyor of the county in which the property is located; and
(2) field notes of each numbered lot with a certificate of the county surveyor certifying that the notes are correct.
(c) The defendant must present the plat and field notes to the executing officer before the sale at a time that will not delay the sale as advertised.
(d) When a sufficient number of the lots are sold to satisfy the amount of the execution, the officer shall stop the sale.
(e) The defendant shall pay the expenses of the survey and the sale, and those expenses do not constitute an additional cost in the case.

34.044 - Stock Shares Subject to Sale

Shares of stock in a corporation or joint-stock company that are owned by defendant in execution may be sold on execution. *Rule 649 shares of stock do not have to be displayed at the sale.*

34.0445 - Persons Eligible to Purchase Real Property---*New law page 172*

(a) An officer conducting a sale of real property under this subchapter may not execute or

deliver a deed to the purchaser of the property unless the purchaser exhibits to the officer an unexpired written statement issued to the person in the manner prescribed by Section 34.015, Tax Code, showing that the county assessor-collector of the county in which the sale is conducted has determined that:
(1) there are no delinquent ad valorem taxes owed by the person to that county; and
(2) for each school district or municipality having territory in the county there are no known reported delinquent ad valorem taxes owed by the person to that school district or municipality.
(b) An individual may not bid on or purchase the property in the name of any other individual. An officer conducting a sale under this subchapter may not execute a deed in the name of or deliver a deed to any person other than the person who was the successful bidder.
(c) The deed executed by the officer conducting the sale must name the successful bidder as the grantee and recite that the successful bidder exhibited to that officer an unexpired written statement issued to the person in the manner prescribed by Section 34.015, Tax Code, showing that the county assessor-collector of the county in which the sale was conducted determined that:
(1) there are no delinquent ad valorem taxes owed by the person to that county; and
(2) for each school district or municipality having territory in the county there are no know or reported delinquent ad valorem taxes owed by the person to that school district or municipality.
(d) If a deed contains the recital required by Subsection (c), it is conclusively presumed that this section was complied with.
(e) A person who knowingly violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.
(f) To the extent of a conflict between this section and any other law, this section controls.
(g) This section applies only to a sale of real property under this subchapter that is conducted in:
(1) a county with a population of 250,000 or more; or
(2) a county with a population of less than 250,000 in which the commissioners court by order has adopted the provisions of this section.

34.045 - Conveyance of Title After Sale

(a) When the sale has been made and its terms complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest, and claim that the defendant in execution had in the property sold.
(b) If the purchaser complies with the terms of the sale but dies before the conveyance is executed, the officer shall execute the conveyance to the purchaser, and the conveyance has the same effect as if it had been executed in the purchaser's lifetime.

34.046 - Purchaser Considered Innocent Purchaser Without Notice

The purchaser of property sold under execution is considered to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the defendant.

34.047 - Distribution of Sale Proceeds

(a) An officer shall deliver money collected on execution to the entitled party at the earliest opportunity.

(b) The officer is entitled to retain from the proceeds of a sale of personal property and amount equal to the reasonable expenses incurred by him in making the levy and keeping the property.
(c) If more money is received from the sale of property than is sufficient to satisfy the executions held by the officer, the officer shall immediately pay the surplus to the defendant or the defendant's agent or attorney.

34.048 - Purchase by Officer Void

If an officer or his deputy conducting an execution sale directly or indirectly purchases the property, the sale is void.

DUTIES AND LIABILITIES OF EXECUTING OFFICER

34.061 - Duty Toward Seized Personalty; Liability

(a) The officer shall keep securely all personal property on which he has levied and for which no delivery bond is given.
(b) If an injury or loss to an interested party results from the negligence of the officer, the officer and his sureties are liable for the value of the property lost or damaged.
(c) The injured party has the burden to prove:
(1) that the officer took actual possession of the injured party's property; and
(2) the actual value of any property lost or damaged.

34.062 - Duty of Successor Officer

If the officer who receives a writ of execution dies or goes out of office before the writ is returned, his successor or the officer authorized to discharge the duties of the office shall proceed in the same manner as the receiving officer was required to proceed.

34.063 - Improper Endorsement of Writ

(a) If an officer receives more than one writ of execution on the same day against the same person and fails to number them as received or if an officer falsely endorses a writ of execution, the officer and the officer's sureties are liable to the plaintiff in execution only for actual damages suffered by the plaintiff because of the failure or false endorsement.
(b) The plaintiff in execution has the burden to prove:
(1) the officer failed to properly number or endorse the writ of execution;
(2) the officer's failure precluded the levy of executable property owned by the judgment debtor;
(3) the executable property owned by the judgment debtor was not exempt from execution or levy; and
(4) the plaintiff in execution suffered actual damages.

34.064 - Improper Return of Writ

(a) An officer may file an amended or corrected return after the officer has returned a writ to a court.
(b) Once an officer received actual notice of an error on a return or of the officer's failure to file a return, the officer shall amend the return or file the return not later than the 30th day after the date of the receipt of notice.
(c) An officer who fails or refuses to amend or file the return may be subject to contempt under Section 7.001(b).

34.065 - Failure to Levy or Sell

(a) If an officer fails or refuses to levy on or sell property subject to execution and the levy or sale could have taken place, the officer and the officer's sureties are liable to the party entitled to receive the money collected on execution only for the actual damages suffered.
(b) The judgment creditor seeking relief under this section has the burden to prove:

(1) the judgment creditor has a valid judgment against the judgment debtor;
(2) the writ of execution was issued to the judgment creditor;
(3) the writ was delivered to the officer;
(4) the judgment creditor's judgment was unpaid and unsatisfied;
(5) the property to be levied on was subject to execution;
(6) the officer failed or refused to levy under the writ; and
(7) the amount of actual damages suffered.
(c) Property to be levied on is subject to execution for purposes of this section if the judgment creditor proves that the judgment debtor owned the property at issue, the property was accessible to the officer under the law, the property was situated in the officer's county, and the property was not exempt from execution.
(d) Before a court may find that an officer failed or refused to levy under the writ for purposes of this section, the court must find that the judgment creditor specifically informed the officer that the property was owned by the judgment debtor and was subject to execution and that the creditor directed the officer to levy on the property.
(e) In this section, "actual damages" is the amount of money the property would have sold for at a constable or sheriff's auction minus any costs of sale, commissions, and additional expenses of execution.

34.066 - Improper Sale

(a) If an officer sells property without giving notice as required by the Texas Rules of Civil Procedure or sells property in a manner other than that prescribed by this chapter and the Texas Rules of Civil Procedure, the officer shall be liable only for actual damages sustained by the injured party.
(b) The injured party has the burden to prove that the sale was improper and any actual damages suffered.

34.067 - Failure to Deliver Money Collected

If an officer fails or refuses to deliver money collected under an execution when demanded by the person entitled to receive the money, the officer and the officer's sureties are liable to the person for the amount collected and for damages at a rate of one percent a month on that amount if proven by the injured party.

34.068 - Rules Governing Actions Under This Chapter

(a) This section applies to any claim for damages brought under Section 7.001, 34.061, 34.063, 34.065, 34.066, or 34.067 or under Section 86.023, Local Government Code.
(b) Suit shall be brought in the form of a lawsuit filed against the officer in the county in which the officer holds office.
(c) All suits must be filed not later that the first anniversary of the date on which the injury accrues.
(d) An officer or a surety may defend the action by stating and providing any defenses provided by law, including any defense that would mitigate damages.

34.069 - Payment of Damages

A county, at the discretion of the commissioners court, may pay any judgment taken against an officer under Section 7.001, 34.061, 34.063, 34.064, 34.065, 34.066, or 34.067 or under Section 86.023, Local Government Code, provided that this section does not apply if the officer is finally convicted under Section 39.02 or 39.03, Penal Code.

34.070 - Right of Subrogation
An officer against whom a judgment has been taken under Section 7.001, 7.002, 34.061, 34.063, 34.064, 34.065, 34.066, or 34.067 or under Section 86.023, Local Government Code, or a county that has paid the judgment on behalf of the officer under Section 34.069, has a right of subrogation against the debtor or person against whom the writ was issued.
34.071 - Duties of Executing Officer
An officer receiving a writ of execution does not have a duty to:
(1) search for property belonging to the judgment debtor;
(2) determine whether property belongs to a judgment debtor;
(3) determine whether property belonging to the judgment debtor is exempt property that is not subject to levy;
(4) determine the priority of liens asserted against property subject to execution; or
(5) make multiple levies for cash or multiple levies at the same location.
Note-Due Diligence Blacks Law 8th edition P.488
34.072 - Timing of Execution and Return
(a) An officer receiving a writ of execution may return the writ after the first levy, or attempted levy, if the judgment creditor cannot designate any more executable property currently owned by the judgment debtor at the time of the first levy or first attempted levy.
(b) Notwithstanding Rule 637, Texas Rules of Civil Procedure, an attempt to levy on property may begin any time during the life of the writ, provided that the officer shall allow enough time for completing the sale of the property.
34.073 - Transfer of Writ; no Duty to Levy Outside of County
(a) An officer receiving a writ may transfer the writ to another officer in another precinct, or to another law enforcement agency authorized to perform executions, within the county of the first officer who received the writ.
(b) An officer does not have a duty to levy on or sell property not within the officer's county, unless it is real property that is partially in the officer's county and partially within a contiguous county.

34.074 - Officer's Surety
(a) An officer's surety may only be liable for the penal sum of the surety bond minus any amounts already paid out under the bond. In no event may an officer's surety be liable for more than the penal sum of the officer's surety bond.
(b) If the officer and the officer's surety are both defendants in an action brought under this chapter, the surety may deposit in the court's registry the amount unpaid under the surety bond and the court shall determine the proper disposition of this sum or order the return of the deposit to the surety in the court's final judgment.
(c) A surety is not a necessary party to an action brought under this chapter or under Section 7.001. Instead, a prevailing party under these provisions may bring a separate action against a surety failing to pay the amount remaining under the bond on a final judgment. This action must be brought on or before 180 days after the date all appeals are exhausted in the underlying action.
34.075 - Wrongful Levy
Whenever a distress warrant, writ of execution, sequestration, attachment, or other like

writ is levied upon personal property, and the property, or any part of the property, is claimed by any claimant who is not a party to the writ, the only remedy against a sheriff or constable for wrongful levy on the property is by trial of right of property under Part VI, Section 9, Texas Rules of Civil Procedure.

34.076 - Exclusive Remedy

This subchapter is the exclusive remedy for violations of an officer's duties with regard to the execution and return of writs without regard to the source of the duty prescribed by law.

ENFORCEMENT OF JUDGMENTS OF OTHER STATES

35.003 - Filing and Status of Foreign Judgments

(a) A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state.

(b) The clerk shall treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed.

(c) A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed.

35.007 – Fees (Same as this state)

(a) A person filing a foreign judgment shall pay to the clerk of the court the amount as otherwise provided in law for filing suit in the courts of this state.

(b) Filing fees are due and payable at the time of filing.

(c) Fees for other enforcement proceedings are as provided by law for judgments of the courts of this state.

ENFORCEMENT OF JUDGMENTS
OTHER COUNTRIES

36.004 - Recognition and Enforcement

Except as provided by Section 36.005, a foreign country judgment that is filed with notice given as provided by this chapter, that meets the requirements of Section 36.002, and that is not refused recognition under Section 36.0044 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The judgment is enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit.

CHAPTER 7
TEXAS RULES OF COURT
ANCILLARY PROCEEDINGS
WRITS & WARRANTS

1.

ATTACHMENT
CIVIL PRACTICE & REMEDIES CODE

A Writ of Attachment for real are personal property is used to placed property under control of the court who had venue over a suite filed in the court. There must be a suit filed before the writ maybe granted.

The plaintiff request the writ and states it is not sought for the purpose of injuring or harassing the defendant, and the plaintiff will probably lose his debt unless the writ of attachment is issued. The judge or clerk of a district or county court or a justice of the peace may issue a writ of original attachment returnable to his court. (61.021 Civil Process & Remedies Code)(CP&RC)

A writ of attachment may be levied only on property that by law is subject to levy under a writ of execution. (61.041 CP&RC) It is returnable in 15 days after the issue date.
NOTE: Cannot levy on Homestead, subject to exceptions, or exempt personal property.
The officer **attaching personal property** shall retain possession until final judgment unless the property is:
1. replevied;
2. sold as provided by law; or
3. claimed by a third party who posts bond and tries his right to the property
(61.042 CP&RC)
The officer **attaching real property** shall immediately file a copy of the writ and the applicable part of the return with the county clerk of each county in which the property is located (CPRC 61.043). The county clerk's duty to place the attachment into the deed records is located in Tex. Pro. Code 21.012).
If the writ of attachment is quashed or vacated, the court that issued the writ shall send a certified copy of the order to the county clerk of each county in which the property is located. (61.043 CP&CR)
Service of a writ of attachment on a financial institution relating to personal property held by the financial institution in the name of or on behalf of a customer of the financial institution is governed by Section 59.008, Finance Code. (61.045 CP&CR)
NOTE: 59.007 of the Finance Code provides that (a) an attachment, injunction, execution, or writ of garnishment may not be issued against or served on a financial institution that has its principal office or a branch in this state to collect money judgment or secure a prospective money judgment against the financial institution before the judgment is filed and all appeals have been foreclosed by law.
(b) An attachment, injunction, execution, or writ of garnishment issued to or served on a financial institution for the purpose of collecting a money judgment or securing a prospective money judgment against a customer of the financial institution is governed by Sec. 59.008 of the Finance Code.
59.008 of the Finance Code provides that (a) A claim against a customer of a financial institution shall be delivered or served as otherwise required or permitted by law at the address designated as the address of the registered agent of the financial institution in a registration filed with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution.
(b) If a financial institutional files a registration statement with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution, a claim against a customer of the financial institution is not effective as to the financial institution if the claim is served or delivered to an address other than that designated by the financial institution in the registration as the address of the financial institution's registered agent.
(c) The customer bears the burden of preventing or limiting a financial institution's compliance with or response to a claim subject to the section by seeking an appropriate remedy, including a restraining order, injunction, protective order, or other remedy, to prevent or suspend the financial institution's response to a claim

against the customer.
(d) A financial institution that does not file a registration with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution, is subject to service or delivery of all claims against the customers of the financial institution or otherwise provided by law.
The officer should keep in mind the plaintiff is responsible for directing the service on the correct person. It is not the officer's responsibility to determine if he was directed to serve the wrong person.
The grounds for a writ of attachments are as follows:
1. the defendant is not a resident of this state or is a foreign corporation or is acting as such;
2. is about to move from this state permanently and has refused to pay or secure the debt due the plaintiff
3. is in hiding so that ordinary process of law cannot be served on him;
4. has hidden or is about to hide his property for the purpose of defrauding his creditors;
5. is about to remove his property from this state without leaving an amount sufficient to pay his debts;
6. is about to remove all or part of his property from the county in which the suit is brought with the intent to defraud his creditors;
7. has disposed of or is about to dispose of all or part of his property with the intent to defraud his creditors;
8. is about to convert all are part of his property into money for the purpose of placing it beyond the reach of his creditors; or
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9. the defendant owes the plaintiff for property obtained by the defendant under false pretenses. (61.002 CP&RC)

LIEN

61.061 - Attachment Lien

Unless quashed or vacated, an executed writ of attachment creates a lien from the date of levy on the real property attached, on the personal property held by the attaching officer, and on the proceeds of any attached personal property that may have been sold.

61.062 - Judgment and Foreclosure

(a) If the plaintiff recovers in the suit, the attachment lien is foreclosed as in the case of other liens. The court shall direct proceeds from personal property previously sold to be applied to the satisfaction of the judgment and the sale of personal property remaining in the hands of the officer and of the real property levied on to satisfy the judgment.
(b) If the writ of attachment on real property was issued from a county or justice court, the court is not required to enter an order or decree foreclosing the lien, but to preserve the lien the judgment must briefly recite the issuance and levy of the writ. The land may be sold under execution after judgment, and sale vests in the purchaser all of the estate of the defendant in the land at the time of the levy.

WORKS OF FINE ART

61.081 - Exemption When en Route to or in an Exhibition

(a) Subject to the limitations of this section, a court may not issue and a person may not

serve any process of **attachment, execution, sequestration, replevin, or distress or of any kind of seizure, levy, or sale on a work of fine art while it is:**
1. en route to an exhibition; or
2. in the possession of the exhibitor or on display as part of the exhibition.
(b) The restriction on the issuance and service of process in Subsection (a) applies only for a period that:
1. begins on the date that the work of fine art is en route to the exhibition; and
2. ends on the earlier of the following dates:
(A) six months after the date that the work of fine art is en route to the exhibition; or
(B) the date that the exhibition ends.
(c) Subsection (a) does not apply to a work of fine art if, at any other time, issuance and service of process in relation to the work has been restricted as provided by Subsection (a).
(d) Subsection (a) does not apply if theft of the work of art from its owner is alleged and found proven by the court.
(e) A court shall, in issuing service of process described by Subsection (a), require that the person serving the process give notice to the exhibitor not less than seven days before the date the period under Subsection (b) ends of the person's intent to serve process.
(f) In this section, "exhibition" means an exhibition:
1. held under the auspices or supervision of:
(A) an organization exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization in Section 501(c)(3) of the code; or
(B) a public or private institution of higher education:
2. held for a cultural, educational, or charitable purpose; and
3. not held for the profit of the exhibitor.

61.082 - Handling and Transportation

A court may not issue any process of attachment, execution, sequestration, replevin, or distress or of any kind of seizure, levy, or sale on a work of fine art unless the court requires, as part of the order authorizing the process, that the work of fine art is handled and transported in a manner that complies with the accepted standards of the artistic community for works of fine art, including, if appropriate, measures relating to the maintenance of proper environmental conditions, proper maintenance, security, and insurance coverage.

NOTE: Follow the courts instructions explicitly. Contact the court if for some reason you are unable to comply with the court instructions and ask for further instructions how to proceed. If for some reason you are still unable to carry out the further instructions of the court, contact your County or District Attorney for help in this matter.

TEXAS RULES OF THE COURT AS THEY APPLY TO A WRIT OF ATTACHMENT

RULE 592 - Application for Writ of Attachment and Order (Excerpts)

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for the issuance of a writ of attachment. Such application shall be supported by affidavits of the plaintiff, his agent, his attorney, or other persons having knowledge of the relevant facts. - - - -

No writ shall issue except upon written order of the court after a hearing, which may be ex parte. The court, in its order granting the application, shall make specific findings of facts to support the statutory grounds found to exist, and shall specify the maximum value of property that may be attached, and the amount of bond required of plaintiff, and further shall command that the attached property be kept safe and preserved subject to further orders of the court. - - - -

The court shall further find in its order the amount of bond required of defendant to replevy, which, unless the defendant chooses to exercise his option as provided in Rule 599, shall be the amount be the amount of plaintiff's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court. The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

NOTE: See Family Code 53.08, CCP 24.11 - Attachment of Person!

They may or may not authorize the person to be placed in jail. In some cases you may only be allow the bring the person to the court with the court is in session.

RULE 593 - Requisites for Writ

A writ of attachment shall be directed to the sheriff or any constable within the State of Texas. It shall command him to attach and hold, unless replevied, subject to the further order of the court, so much of the property of the defendant, of a reasonable value in approximately the amount fixed by the court, as shall be found within his county.

RULE 594 - Form of Writ

The following form of writ may be issued:

"The State of Texas.

"To the Sheriff or any Constable of any County of the State of Texas, greeting:

"We command you that you attach forthwith so much of the property of C. D., if it be found in your county, repleviable on security, as shall be of value sufficient to make the sum of _____dollars, and the probable costs of suit, to satisfy the demand of A.B., and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon to be had before our court in_____ County of _____. You will true return make of this writ on or before 10 a.m. of Monday, the ____day of _____, 20___, showing how you have executed the same."

NOTE: This writ will be signed by the judge of the court and the return by the officer in which the property is located, making service. Officer cannot go into another county to serve this writ. If there is insufficient property in your county to satisfy the writ, the court may issue additional writs of attachments to other counties to be served by the officers of that county.

RULE 596 - Delivery of Writ

The writ of attachment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer issuing it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

RULE 597 - Duty of Officer

The sheriff or constable receiving the writ shall immediately proceed to execute the same

by levying upon so much of the property of the defendant subject to the writ, and found within his county, as may be sufficient to satisfy the command of the writ.

RULE 598 - Levy, how made

The writ of attachment shall be levied in the same manner as is, or may be, the writ of execution upon similar property.

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RULE 598a - Service of Writ on Defendant

The defendant shall be served in any manner prescribed for service of citation, or as provided in Rule 21a, with a copy of the writ of attachment, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ. There shall be prominently displayed on the face of the copy of the writ served on the defendant, ***in ten point type** and in a manner calculated to advise a reasonably attentive person of its contents, the following:

*"To_____, Defendant:

"You are hereby notified that certain properties alleged to be owned by you have been attached. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT"

NOTE: This notice to the defendant should be prominently displayed on the face of the copy of the writ. If not, you might call it to the attention of the court. If the court insists that the writ is correct, I would proceed to serve it.

RULE 599 - Defendant may Replevy (Excerpt)

At any time before judgment, should the attached property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under the order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property sought to be replevied (to be estimated by the officer), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.- - - - -

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that attached, for the property attached. Provided that there has been located sufficient property of the defendants to satisfy the order of attachment, the court may authorize substitution on one or more times of defendant's property for all or part of the property attached. The court shall first make findings as to the value of the property to be substituted. **If property is substituted the property released from attachment shall be delivered to defendant,** if such property is personal property, and all liens upon such property from the original order of attachment or modification thereof shall be terminated. Attachment of substituted property shall be deemed to have existed from the date of levy on the original property attached, and no property on which liens have become affixed since the date of levy on the original property may be substituted.

NOTE: If the court allows the defendant to substitute property for that property, or part of that property, which has been attached then upon order by the court you would be required to return that part of the property that has been released to defendant.

RULE 600 - Sale of Perishable Property

Whenever personal property which has been attached shall not have been claimed or replevied, the judge, or justice of the peace, out whose court the writ was issued, may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

RULE 601 - To Protect Interests

In determining whether the property attached is perishable, and the necessity or advantage of ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may by a preliminary order entered of record, with or without notice to the parties as the urgency of the case in his opinion requires, direct the sheriff or constable to sell such property at public auction for cash, and thereupon the officer shall sell it accordingly.

RULE 603 - Procedure for Sale

Such sale of attached perishable personal property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and at the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than 10 days, according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.

NOTE: The rules for sale of perishable personal property shall be conducted in the same manner as sales under the rules of execution. If you know the rules of execution you will have no problem with Ancillary Proceedings (Writs - process)

RULE 604 - Return of Sale

The officer making such sale of perishable property shall promptly pay the proceeds of such sale to the clerk of such court or justice of the peace, as the case may be, and shall make written return of the order of sale signed by him officially, stating:

1. the time and place of the sale,
2. the name of the purchaser,
3. the amount of money received,
4. with an itemized account of the expenses attending sale and
5. such return shall be filed with the papers of the case.

RULE 605 - Judge May Make Necessary Orders

When the perishable personal property levied on under the attachment writ has not been claimed or replevied, the judge or justice of the peace may make such orders, either in term time or vacation, as may be necessary for its preservation or use.

RULE 606 - Return of Writ

The officer executing the writ of attachment shall return the writ, with his action endorsed thereon, or attached thereto,

1. signed by him officially, to the court from which it issued,
2. at or before 10 o'clock a.m. of the Monday next after the expiration of fifteen days from the date of issuance of the writ.
3. such return shall described the property attached with sufficient certainty to identify it,
4. state when the same was attached,
5. whether any personal property attached remains still in his hands,

6. and, if not, the disposition made of the same.
When property has been replevied he shall deliver the replevy bond to the clerk or justice of the peace to be filed with the papers of the cause.

RULE 607 - Report of Disposition of Property

When property levied on is claimed, replevied or sold, or otherwise disposed of after the writ has been returned, the officer having the custody of the same shall:
1. immediately make a report in writing,
2. signed by him officially, to the clerk, or justice of the peace, as the case may be, showing such disposition of the property.
3. such report shall be filed among the papers of the cause.

RULE 609 - Amendment - Officers Return

Clerical errors in the affidavit, bond, or writ of attachment, or the officer's return thereof, may upon application in witting to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize by an order entered in the minutes of the court or noted on the docket of the justice of the peace, provided the amendment does not change or add to the grounds of such attachment as stated in the affidavit, and provide such amendment appears to the judge of justice to be in furtherance of justice.

NOTE: In the event there is an error or errors in the officer's return, the court may authorize the officer to amend the return in such manner and on such terms as the judge shall authorize by an order entered in the minutes of the court or noted on the docket of the justice of the peace. Under these circumstances there is no problem for the officer in amending his return. Civil Practices & Remedies Code 34.063(a)

EXAMPLES

There have been very few cases cited in the Texas Revised Civil Statutes, sometimes referred to as the **"Black Statutes"** concerning a Writ of Attachment. The reason for the name "**Black Statutes"** is because the statutes are published in a black hard back cover. Many of the examples are from old cases and you should check with your County Attorney as to their current validity.

1. Where the levy under a writ of attachment was not made until two days after the return date of the writ, the levy was absolutely void. *Rone v. Marti, 244 S.W. 822.*
2. A writ of attachment regular and valid on its face will protect the officer who executes it. *Randall v. Rosenthal, 31 S.W. 822.*
3. An officer in whose hands a writ of attachment is placed must execute it, although he may have knowledge of the insufficiency of the cause of action, and that it was sued out maliciously; and he is not liable on his official bond. *Blum v. Strong, 6 S.W. 167.*
4. As the sheriff's possession of property attached at the instance of the plaintiff is no more subject to control of the plaintiff as to the manner in which he keeps the same than to direction of defendant, and as levy of a writ of attachment does not satisfy the debt, plaintiff is not responsible to defendant for injury to the attached property due to misconduct or negligence of the sheriff; but the sheriff's wrong is an injury to both parties to whom the sheriff and the sureties on his bond may be caused to respond. *Kanaman v. Hubbard, 222 S.W. 151.*
5. A writ of attachment, if valid, justifies the seizure of so much of the debtor's nonexempt property as is necessary to satisfy the creditor's demand. *Miller v. Dunagan, 123 S.W. 363.*

6. No valid levy was made, where sheriff merely rode out among steers, counted them, and left them without segregating them from other steers in pasture or making arrangements to put any one in charge; there being no "taking into possession." *Western Nat.Bank of Hereford v. Steele, 27 S.W.2d 572, Williams v. De Baca, 113 S.W.2d 566.*
7. Posting notice of attempted levy attachment was insufficient where sheriff did not take physical possession of property. *Osborn v. Paul, 27 S.W. 572.*
8. Private process servers are prohibited from executing writs of attachment, sequestration, and distress warrants as only a sheriff or constable may execute the writs; however, private process servers are permitted to serve notices of the writs on defendants pursuant to Rule 21a, 593, 598a, 6d12, 613, 700a, Texas Rules of Civil Procedure. *Lawyers Civil Process, Inc. v. State ex rel Vines, 690 S.W. 939.*
9. Under statute, an officer attaching personal property must keep the property in his possession until final judgment is rendered, unless the property is replevied, sold, or claimed by a third party on oath and bond.
An officer who attaches personal property is under obligation to care for it, but officer is not subject to control of either plaintiff or defendant as to the manner in which he shall perform the duty, and is not the agent or servant of either party.
Letter addressed by attorney for plaintiffs to constable informing him that one of defendants had replevied most of machinery levied upon by constable under writ of attachment, and that plaintiffs had therefore released the rest of the property levied upon and that there would be no further necessity to keep any watchmen on the property, **had no legal effect,** until judgment was rendered or property was replevied or sold, or until constable was presented with a claimant's oath and bond, constable had duty to retain custody and control of the property.
Attaching officer need not himself guard property attached but may employ others to perform the duty for him and although no fee for care of attached property is fixed by statute, the officer is entitled to a reasonable allowance for his services. *Sorrells v. Irion, 216 S.W.2d 1021.*
10. To pass title under attachments proceedings, the description of land, as given in sheriff's return on the writ of attachment, must be clear and definite and certain as the description in a deed. *Davis v. Kirby Lumber Corp. 158 S.W.2d 888.*

SEQUESTRATION
CIVIL PRACTICE & REMEDIES CODE

62.001 - Grounds
A writ of sequestration is available to a plaintiff in a suit if:
1. the suit is for title or possession of personal property or fixtures or for foreclosure or enforcement of a mortgage, lien, or security interest on foreclosure or enforcement of a mortgage, lien, or security interest on personal property or fixtures and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property will conceal, dispose of, ill-treat, waste, or destroy the property or remove it from the county during the suit;

2. the suit is for title or possession of real property or for foreclosure or enforcement of a mortgage or lien on real property and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property will use his possession to injure or ill-treat the property or waste or convert to his own use the timber, rents, fruits, or revenue of the property;
3. the suit is for the title or possession of property from which the plaintiff has been ejected by force or violence; or
4. the suit is to try the title to real property, to remove a cloud from the title of real property, to foreclose a lien on real property, or to partition real property and the plaintiff makes an oath that one or more of the defendants is a nonresident of this state.

The Business and Commerce Code Sec. 9.609(b) Provides for the secured party may regain possess without judicial process, if it proceeds without a breach of the peace. If the possession party refuses to surrender the property then the secured party must use the judicial process. The officer should be aware the defendant has possibly refused to surrender property already and should use caution when executing the Sequestration.

62.002 - Pending Suit Required
A writ of sequestration may be issued at the initiation of a suit or at any time before final judgment.

62.003 - Available for Claim Not Due
A writ of sequestration may be issued for personal property under a mortgage or a lien even though the right of action on the mortgage or lien has not accrued. The proceedings relating to the writ shall be as in other cases, except that final judgment may not be rendered against the defendant until the right of action has accrued.

62.021 - Who May Issue
A district or county court judge or a justice of the peace may issue writs of sequestration returnable to his court.

62.023 - Required Statement of Rights
(a) A writ of sequestration must prominently display the following statement on the face of the writ:
YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.
(b) The statement must be printed in **10-point type** and in a manner intended to advise a reasonable attentive person of its contents.

62.061 - Officer's Liability and Duty of Care
(a) An officer who executes a writ of sequestration shall care for and manage in a prudent manner the sequestered property he retains in custody.
(b) If the officer entrusts sequestered property to another person, the officer is responsible for the acts of that person relating to the property.
(c) The officer is liable for injuries to the sequestered property resulting from his neglect

or mismanagement or from the neglect or mismanagement of a person to whom he entrusts the property.
NOTE: The same rules apply in serving a writ of sequestration as it would be in serving any other writ. These writs are served under Rule 21a.

62.062 - Compensation of Officer
(a) An officer who retains custody of sequestered property is entitled to just compensation and reasonable charges to be determined by the court that issued the writ.
(b) The officer's compensation and charges shall be taxed and collected as a cost of suit.
NOTE: Any fees collected would go to the general fund of the county.

62.063 - Indemnification of Officer for Money Spent
If an officer is required to expend money in the security, management, or care of sequestered property, he may retain possession of the property until the money is repaid by the party seeking to replevy the property or by that party's agent or attorney.
NOTE: You are required to take care of the property and before property can be returned you are required to see that the money expended by you, is paid to you from the party seeking replevy of the property. Keep receipts of the money expended by you and give a receipt to the party seeking replevy of the property when you are paid.

SEQUESTRATION
TEXAS RULES OF THE COURT

RULE 699 - Requisites of Writ
The writ of sequestration shall be directed
1. To the Sheriff or any Constable within the State of Texas (not naming a specific county) and
2. shall command him to take into his possession the property, describing the same as it is described in the application or affidavits, if to be found in his county, and to keep the same subject to further orders of the court, unless the same is replevied, and
3 there shall be prominently displayed on the face of the writ, in 10 point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:
"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

RULE 700 - Amendment of Officers Return
Clerical errors in the affidavit, bond, or writ of sequestration or the officer's return thereof may upon application in writing to the judge of the court in which the suit is filed and after notice to the opponent, be amended in such manner and on such terms as the judge shall authorize by an order entered in the minutes of the court, provided the amendment does not change or add to the grounds of such sequestration as stated in the affidavit, and provided such amendment appears to the judge to be in furtherance of justice.

CPRC 34.064. Improper Return of Writ

(a) An officer may file an amended or corrected return after the officer has returned a writ to a court. (b) Once an officer receives actual notice of an error on a return or of the officer's failure to file a return, the officer shall amend the return or file the return not later than the 30th day after the date of the receipt of notice. (c) An officer who fails or refuses to amend or file the return may be subject to contempt under Section 7.001(b).

RULE 700a - Service of Writ on Defendant

The defendant shall be served in any manner provided for service of citation or as provided in Rule 21a, with a copy of the writ of sequestration, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ. There shall also be prominently displayed on the face of the copy of the writ served on defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following: **"**To , Defendant: You are hereby notified that certain properties alleged to be claimed by you have been sequestered. If you claim any rights in such property, you are advised: YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

RULE 701 - Defendant May Replevy (Excerpts)

At any time before judgment, should the sequestered property not have been previously claimed, replevied, or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond, with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff in the amount fixed by the court's order, conditioned as provided in Rule 702 or Rule 703.

On reasonable notice to the opposing party (which may be less than a three days) either party shall have the right to prompt judicial review - - - - - - - The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

Note: First 10 days defendant has sole replevy right. The 10 days starts running when the defendant is served. The officer should use Rule 21a to effect this service on the defendant. The officer or the court may approve the bond. Preference way is for the court to approve.

RULE 702 - Bond for Personal Property

If the property to be replevied be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment and of the fruits, hire or revenue of the same in case he shall be condemned to do so.

RULE 703 - Bond for Real Estate

If the property be real estate, the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be

condemned so to do.

RULE 704 - Return of Bond and Entry of Judgment
The bond provided for in the three preceding rules shall be returned with the writ to the court from whence the writ issued. In case the suit is decided against the defendant, final judgment shall be rendered against all the obligors in such bond, jointly and severally, for the value of the property replevied as of the date of the execution the replevy bond, and the value of the fruits, hire, revenue, or rent thereof, as the case may be.

RULE 705 - Defendant May Return Sequestered Property
Within ten days after final judgment for personal property the defendant may deliver to the plaintiff, or to the officer who levied the sequestration or to his successor in office the personal property in question, and such officer shall deliver same to the plaintiff upon his demand therefor; or such defendant shall deliver such property to the officer demanding same under execution issued therefore upon a judgment for the title or possession of the same; **and such officer shall receipt the defendant for such property,** provided, however, that such delivery to the plaintiff or to such officer shall be without prejudice to any rights of the plaintiff under the replevy bond given by the defendant. Where a mortgage or other lien of any kind is foreclosed upon personal property sequestered and replevied, the defendant shall deliver such property to the officer calling for same under order of sale issued upon a judgment foreclosing such mortgage or other lien, either in the county of defendant's residence or in the county where sequestered, as demanded by such officer; provided, however, that such delivery by the defendant shall be without prejudiced to any rights of the plaintiff under the replevy bond given by the defendant.
Note: Property shall be returned in the same condition it was in when replevied. The officer should make notes and or take photos of the property to document the condition at the time the property was replevied.

RULE 706 - Disposition of the Property by Officer
When the property is tendered back by the defendant to the officer who sequestered the same or to the officer calling for same under an order of sale, such officer shall receive said property and hold or dispose of the same as ordered by the court; provided, however, that such return to and receipt of same by the officer and any sale or disposition of said property by the officer under order or judgment of the court shall not affect or limit any right of the plaintiff under the bond provided for in Rule 702.

RULE 707 - Execution
If the property be not returned and received, as provided in the two preceding rules, execution shall issue upon said judgment for the amount due thereon, as in other cases.

RULE 708 - Plaintiff May Replevy (Excerpts)
When the defendant fails to replevy the property within ten days after the levy of the writ and service of notice on defendant, the officer having the property in possession shall at any time thereafter and before final judgment, deliver the same to the plaintiff upon his giving bond payable to defendant in a sum of money not less than the amount fixed by the court's order, with sufficient surety or sureties as provided by statute to be approved by such officer. If

the property to be replevied be personal property, the condition of the bond shall be that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire, or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment (regardless of the cause of such difference in value, and of the fruits, hire, or revenue is the same in case he shall be condemned to do so). If the property be real estate, the condition of such bond shall be that the plaintiff will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned to do so. On reasonable notice to the opposing party(which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ.- - - - - - - - - The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.
Note: The court may allow the plaintiff's posting bond to act as his replevy bond if that posting bond meets the requirements of a replevy bond. I can be stated in the original that the issuing bond may act as the plaintiff's replevy bond.

RULE 709 - When Bond Forfeited (Excerpts)
The bond provided for in the preceding rule shall be returned by the officer to the court issuing the writ - - - - - - - -

RULE 710 - Sale of Perishable Goods
If after the expiration of ten days from the levy of a writ of sequestration the defendant has failed to replevy the same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed or greatly depreciated in value by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or vacation, to order the sale of said property or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either party may replevy the property at any time before such sale.

RULE 711 - Order of Sale For
The judge or justice granting the order provided for in the preceding rule shall issue an order directed to the officer having such property in possession, commanding such officer to sell such property in the same manner as under execution.

RULE 712 - Return of Order
The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued, with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceed of such sale.

RULE 713 - Sale on Debt Not Due
If the suit in which the sequestration issued be for a debt or demand not yet due, and the property sequestrated be likely to be wasted, destroyed or greatly depreciated in value by

keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due. **NOTE: You may receive an objection from an attorney that you can't sell a debt or demand not yet due. The proper place to file his objection is with the court who issued the order.**

RULE 714 - Purchaser's Bond
In the case of a sale as provided for in the preceding rule, the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, **to be approved by the officer making the sale,** and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given.

RULE 715 - Return of Bond
The bond provided for in the preceding rule shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause.

RULE 716 - Recovery on Bond
In case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon and all costs incurred in the enforcement and collection of the same; and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause.
EXAMPLES
1. Where sheriff's return on plaintiff's sequestration writ stated that on March 2, 1946, described reality was in sheriff's possession but there was no statement in return that a replevin bond was or was not given, nor that realty was or was not returned to possession of defendants, return was not conclusive or even prima facie as to such facts and it would be assumed that the facts were proved in trial of case.
Lindsey v. Williams, 228 S.W. 2d 243
2. The statute requiring that "value" of property replevied in sequestration proceeding - - - - - -refers to market value. *Universal Credit Co. v. Cole, 146 S.W. 2d 222*

3.
DISTRESS WARRANTS
TEXAS RULES OF THE COURT

The suit is filed in the apocopate court based on the amount of rent owed for commercial or agricultural property. Once the suit is filed the Justice of the Peace in the precinct where the property is located may issue the distress warrant. A distress warrant may not be issued for residential tenants. The distress warrant return will be filed with the court who has jurisdiction over the suit. Changes in the commercial lockout law have made the Distress Warrants seldom issued now. Commercial tenants may be locked out and the landlord is not required to let the tenant back in until the back rent is paid.

RULE 612 -Requisites For Distress Warrant
A distress warrant shall be directed to the sheriff or any constable within the State of Texas. It shall command him to attach and hold, unless replevied, subject to the further orders of the court having jurisdiction, so much of the property of the defendant, not exempt by statute, of reasonable value in approximately the amount fixed by the justice of the peace, as shall be found within his county.

RULE 613 - Service of Distress Warrant on Defendant
The defendant shall be served in any manner prescribed for service of citation, or as provided in Rule 21a, with a copy of the distress warrant, the application, accompanying affidavits, and orders of the justice of the peace as soon as practicable following the levy of the warrant. There shall be prominently displayed on the face of the copy of the warrant served on the defendant, ***in 10-point type** and in a manner calculated to advise a reasonably attentive person of its contents, the following:
*To _____, Defendant: You are hereby notified that certain properties alleged to be owned by you have been seized. If you claim any rights in such property, you are advised:
"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A TO RIGHT SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WARRANT."

RULE 614 - Defendant May Replevy (Excerpts)
At any timed before judgment, should the seized property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving a bond with sufficient surety or sureties as provided by statute, to be approved by the court having jurisdiction - - - - -the defendant shall have the right to move the court for substitution of property, of equal value as that attached, for the property seized. - - - - - If property is substituted, the property released from seizure shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of seizure or modification thereof shall be terminated. Seizure of substituted property shall be deemed to have existed from the date of levy on the original property seized, and no property on which liens have become affixed since the date of levy on the original property may be substituted.
NOTE: If the judge substitutes property and gives you the notice of substitution you are required to return the original property seized... It is suggested that when you return the original property seized that you make a return on the notice and return it to the court.

RULE 614a - Dissolution or Modification of Distress Warrant (Excerpts)
A defendant whose property has been seized or any intervening claimant who claims an interest in such property, may by sworn written motion, seek to vacate, dissolve, or modify the seizure. - - - - - The court may make all such orders, including orders concerning the care, preservation, or disposition of the property (or the proceeds therefrom if the same has been sold), as justice may require.
NOTE: If the justice issues an order for the care, preservation, or disposition of the

property, or the proceeds therefrom if the same has been sold and you have been put on notice of this order you will be required to follow the orders of the court. It is suggested that you make a return on the court order how you have complied with order and return it to the court. You now have a complete paper trail for your files.

RULE 615 - Sale of Perishable Property
Whenever personal property which has been levied on under a distress warrant shall not have been claimed or replevied, the judge, or justice of the peace, to whose court such writ is made returnable may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property in danger of serious and immediate waste or decay, or that the keeping it the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.
NOTE: If you have any problems with waste, decay or if keeping property until trial will necessarily be attended with such expense or greatly deteriorate in value you need to get in touch with the judge immediately in order to protect the value of the property seized. At that point the judge should issue an order authorizing sale of the property. Be sure and do this in writing, and call it to the judge's attention. This way you will have a paper trail and the court will be on notice of the problem.

RULE 616 - To Protect Interest
In determining whether the property levied upon is perishable, and the necessity or advantage of ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may by a preliminary order entered of record with or without notice to the parties as the urgency of the case in his opinion requires, **direct the sheriff or constable to sell such property at public auction for cash, and thereupon the sheriff or constable shall sell it accordingly.** If the application for an order of sale be filed by any person or party other than the defendant from whose possession the property was taken by levy, the court shall not grant such order, unless the applicant shall file with such court a bond payable to such defendant, with two or more good and sufficient sureties, to be approved by said court, conditioned that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made.
NOTE: You must wait for the court order of sale before you can proceed. Remember it is the judge that makes the decision as to whether or not the goods are perishable. Now you can see the reason of the paper trail.

RULE: 617 - Procedure For Sale
Such sale of perishable personal property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than 10 days, according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.
NOTE: Be sure that you read the order of the court and do exactly as ordered.

RULE 618 - Return of Sale
The officer making such sale of perishable property shall promptly pay the proceeds of

such sale to the clerk of such court or to the justice of the peace, as the case may be, and shall make written return of the order of sale, signed by him officially, stating the time and place of the sale, the name of the purchaser, and the amount of money received, with an itemized account of the expenses attending the sale. Such return shall be filed with the papers of the case.
Note: Be sure and get a receipt for the proceeds turned over to the clerk.

RULE 619 - Citation for Defendant
The justice at the time he issues the warrant shall issue a citation to the defendant requiring him to answer before such justice at the first day of the next succeeding term of court, stating the time and place of holding same, if he has jurisdiction to finally try the cause, and upon its being returned served, to proceed to judgment as in ordinary cases; and, if he has not such jurisdiction, the citation shall require the defendant to answer before the court to which the warrant was made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, stating the place of holding the court, and shall be returned with the other papers to such court. **If the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the case ex parte, and may enter judgment.**

RULE 620 - Petition
When the warrant is made returnable to the district or county court, the plaintiff shall file his petition within 10 days from the date of the issuance of the writ.
EXAMPLES
1. The statute authorizing issuance of distress warrant, when tenant is about to remove property from leased premises, permits issuance of writ at any time before landlord's lien is lost, and does not prohibiting issuance of writ after removal of property.
Gollehon v. Porter, 161 S.W. 2d 134
2. Where lease required tenant to pay rent, taxes and insurance and lessor retained statutory lien in addition to contractual lien on all personal property on premises on default by lessee, lessor had right to obtain writ of garnishment and distress warrant.
3. Private process servers are prohibited from executing writs of attachment, sequestration, and distress warrants as only a sheriff or constable may execute the writs; however, private process serves are permitted to serve notices of the writs on defendants pursuant to rule 21a Texas Rules of Procedure.
Lawyers Civil Process, Inc. v. State ex rel. Vines, 690 S.W.2d 939

4.
EXECUTIONS
TEXAS RULES OF THE COURT

A Writ of Execution is the enforcement document for the final judgment of a court and issued at the request of the plaintiff or his attorney. The clerk of the district or county court or the justice of the peace shall issue the Writ of Execution that is addressed to any sheriff or any constable within the State of Texas. The rule instructs you to make demand for payment and if it is not paid to seize any non exempt property belonging to the defendant found within your county. This is unlike citations because the rule does not say serving or delivering to the defendant.

It's important for you to know the rules that govern executions and exempt property codes.

RULE 621 - Enforcement of Judgment
The judgments of the district, county, and justice courts shall be enforced by execution or other appropriate process. **Such execution or other process shall be returnable within 30, 60, or 90 days as requested by the plaintiff, his agent or attorney.**
NOTE: Writ of execution, after the lapse of time in which it is made returnable by law, is of no force; and the right of an officer, by virtue of the writ, to take and sell property ceases from the date the writ is returnable. ***Chance v. Pace, 151 S.W. 843, Long v. Castaneda, 475 S.W.2d 578.***

RULE 622 - Execution
An execution is a process of the court from which it is issued. The clerk of the district, or county court, or the justice of the peace, as the case may be, shall tax the costs in every case in which a final judgment has been rendered and shall issue execution to enforce such judgment and collect such costs. The execution and subsequent executions shall not be addressed to a particular county, **but shall be addressed to any sheriff or any constable within the State of Texas.**
NOTE: 1. Trial court may enforce judgment through order of execution, attachment, garnishment, or order requiring post judgment turnover of judgment debtor's property, order of contempt, or by others orders necessary or proper in aid of its jurisdiction. ***Greiner v. Jameson, 865 S.W. 2d 493***
2. No part of a spendthrift trust estate can be taken on execution or garnishment by creditors of beneficiary. ***Bank of Dallas v. Republic Nat. Bank of Dallas, 540 S.W. 2d 499.***
Death: Executor (Rule 623), Plaintiff (Rule 624), Defendant (Rule 625-626)

RULE 627 Time for Issuance
(Rule Summary) If no supersedeas bond is posted or notice of appeal has not been filed the Writ of Execution may not issue until 30 days after the date the judgment is signed.

RULE 629 - Requisites of Execution
The style of the execution shall be
1. The State of Texas
2. It shall be directed to any sheriff or any constable within the State of Texas.
3. It shall be signed by the clerk or justice officially, and bear the seal of the court, if issued out of the district or county court, and shall require the officer to execute it according to its terms, and to make the costs which have been adjudged against the defendant in execution and the further costs of executing the writ.
4. It shall describe the judgment, stating the court in which, and the time when, rendered.
5. The names of the parties in whose favor and against whom the judgment was rendered.
6. A correct copy of the bill of costs taxed against the defendant in execution shall be attached to the writ.
7. **It shall require the officer to return it within 30, 60, or 90 days, as directed by the**

plaintiff or his attorney.
Note: A lengthy judgment may not allow sufficient room on the face of the writ. It may say see attached judgment.

Rule 630, 631, 632 and 633 specify what the plaintiff may as for. It maybe one are even all the all rolled into one judgment. The key is the judgment must specify what the court awards.

RULE 630 - Execution on Judgment for Money
When an execution is issued upon a judgment for a sum of money, or directing the payment simply of a sum of money, it must specify in the body thereof the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law.

RULE 631 - Execution for Sale of Particular Property
An execution issued upon a judgment for the sale of particular chattels or personal property or real estate, must particularly describe the property, and shall direct the officer to make the sale by previously giving the public notice of the time and place of sale required by law and these rules.

RULE 632 - Execution for Delivery of Certain Property
An execution issued upon a judgment for the delivery of the possession of a chattel or personal property, or for the delivery of the possession of real property, shall particularly describe the property, and designate the party to whom the judgment awards the possession. The writ shall require the officer to deliver the possession of the property to the party entitled thereto.

RULE 633 - Execution for Possession or Value of Personal Property
If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

RULE 634 - Execution Superseded
The clerk or justice of the peace shall immediately issue a writ of supersedeas suspending all further proceedings under any execution previously issued when a supersedeas bond is afterward filed and approved within the time prescribed by law or these rules.
Note: If a defendant says a supersedeas bond has been filed check with the court for verification. Bonds have been filed and the officer was not notified the bond was filed.

RULE 635 - Stay of Execution in Justice Court
At any time within ten days after the rendition of any judgment in a justice court, the justice may grant a stay of execution thereof for three months from the date of such judgment, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties, to be approved by the justice, appear before him and

acknowledge themselves and each of them bound to the successful party in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of execution shall be granted unless the party applying therefor shall first file an affidavit with the justice that he has not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him and would cause a sacrifice of his property which would not likely be caused should said execution be stayed. Such acknowledgment shall be entered by the justice on his docket and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such day.

RULE 636 - Endorsements by Officer
The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person he shall number them as received.

RULE 637 - Levy of Execution
When an execution is delivered to an officer he shall proceed without delay to levy the same upon the property of the defendant found within his county not exempt from execution, unless otherwise directed by the plaintiff, his agent or attorney. The officer shall
1. first call upon the defendant, if he can be found, or, if absent, upon his agent within the county, if known, to point out property to be levied upon, and the levy shall first be made upon the property designated by the defendant, or his agent.
2. if in the opinion of the officer the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall
3. require an additional designation by the defendant.
4. if no property be thus designated by the defendant, the officer shall levy the execution upon any property of the defendant subject to execution.
NOTE: You cannot execute on homestead or exempt personal property. If defendant claims two (2) homesteads and will not voluntary designate which one he claims as a homestead ground but it shall be sufficient of him to indorse such levy on the writ, you should report back to the plaintiff's attorney. It will be up to the attorney to request the court to require the defendant to voluntary designate the homestead, if the defendant does not do so, the court may appoint a commissioner to so designate the homestead for the defendant. It is possible that time will run out before you can levy under the current execution and you will have to make your return showing that you were unable to determine the homestead of the defendant and could find no other property in your county to satisfy the judgment. If a new execution is issued, you may then proceed to levy on the property not designated as a homestead.

RULE 638 - Property Not To Be Designated
A defendant in execution shall not point out property which he has sold, mortgaged or conveyed in trust or property exempt from forced sale.

RULE 639 - Levy
In order to make a **levy on real estate,** it shall not be necessary for the officer to go upon the ground but it shall be sufficient for him to indorse such levy on the writ. **Levy upon personal property** is made by taking possession thereof, when the defendant in execution is entitled to the possession. Where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them where there are several.

RULE 640 - Levy on Stock Running at Large
A levy upon livestock running at large in a range, and which cannot be herded and penned without great inconvenience and expense, may be made by designating by reasonable estimate the number of animals and describing them by their marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner or his herder or agent, if residing within the county and known to the officer.

RULE 641 - Levy on Shares of Stock
A levy upon shares of stock of any corporation or joint stock company for which a certificate is outstanding is made by the officer seizing and taking possession of such certificate. Provided, however, that nothing herein shall be construed as restricting any rights granted under Section 8.317 of the Texas Uniform Commercial Code.
Note: Shares of stock do not have to be displayed at the sale.(Rule 649)

RULE 643 - Levy on Goods Pledged or Mortgaged
Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, **may be levied upon and sold on execution** against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage.

Rule 644 - May Give Delivery Bond
Any personal property taken in execution may be returned to the defendant by the officer upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, conditioned that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of a fair value thereof, which shall be stated in the bond.

RULE 645 - Property May Be Sold By the Defendant
Where property has been replevied, as provided in the proceeding rule, the defendant may sell or dispose of the same, paying the officer the stipulated value thereof.

RULE 646 - Forfeited Delivery Bond
In case of the non-delivery of the property according to the terms of the delivery bond, and non-payment of the value thereof, the officer shall forthwith indorse the bond "Forfeited" and return the same to the clerk of the court or the justice of the peace from which the execution issued; whereupon, if the judgment remains unsatisfied in whole or in part, the clerk, or justice

shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which instruction shall be indorsed by the clerk or justice on the execution.

RULE 646a - Sale of Real Property-----*See law update starting on page 172*
Real property taken by virtue of any execution shall be sold at public auction, at the courthouse door of the county, unless the court orders that such sale be at the place where the real property is situated, **on the first Tuesday of the month, between the hours of ten o'clock a.m. and four o'clock, p.m.**

RULE 647 - Notice of Sale of Real Estate
The time and place of sale of real estate under execution, order of sale, or venditioni exponas, shall
1. be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county.
2. the first of said publications shall appear not less than twenty (20) days immediately preceding the day of sale.
3. said notice shall contain a statement of the authority by virtue of which the sale is to be made,
4. the time of the levy; and
5. the time and place of sale; (*This is the approximately the time the sale will take place)*
6. it shall also contain a brief description of the property to be sold, and
7. shall give the number of acres, original survey, locality in the county, and
8. the name by which the land is most generally know, but it shall not be necessary for it to contain field notes.
9. publishers of newspapers shall charge the legal rate of Two (2) cents per word for the first insertion of such publication and One (1) cent per word for such subsequent insertions, or such newspapers shall be entitled to charge for such publication at a rate equal to but not in excess of the published word or line rate of the newspaper for such class of advertising.
10. if there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale.
11. the officer making the levy shall give the defendant, or his attorney, written notice of such sale either in person or by mail, which notice shall substantially conform to the foregoing requirements.

RULE 648 - "Courthouse Door" Defined
By the term "courthouse door" of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court. If from any cause there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the courthouse door. Where the courthouse, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place was such house stood shall be deemed to be the courthouse door.

RULE 649 - Sale of Personal Property
Personal property levied on under execution shall
1. be offered for sale on the premises where it is taken in execution, or
2. at the courthouse door of the county,
3. or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. *(usually the pace of storage)*
Personal property susceptible of being exhibited shall not be sold unless the same be present and subject to the view of those attending the sale, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession in which case the interest of defendant may be sold and conveyed without the presence or delivery of the property.
When a levy is made upon livestock running at large on the range, it is not necessary that such stock, or any part thereof, be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.
Note: Rule 649 is broken down in order to be more readily understandable.

Rule 650 - Notice of Sale of Personal Property
Previous notice of the time and place of the sale of any personal property levied on under execution shall be given by posting notice thereof for 10 days successively immediately prior to the day of sale at the courthouse door of any county and at the place where the sale is to be made.

RULE 651 - When Execution Not Satisfied
When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

RULE 652 - Purchaser Failing to Comply
If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay the plaintiff in execution twenty percent of the value of the property thus bid off, besides costs, to be recovered on motion, five days notice of such motion being given to such purchaser; and should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided.

RULE 653 - Resale of Property
When the terms of the sale shall not be complied with by the bidder the levying officer shall proceed to sell the same property again on the same day, if there be sufficient time; but if not, he shall re-advertise and sell the same as in the first instance.

RULE 654 - Return of Execution
The levying officer shall make due return of the execution, in writing and signed by him officially, stating concisely what such officer has done in pursuance of the requirements of the writ and of the law. The return shall be filed with the clerk of the court or the justice of the peace, as the case may be. The execution shall be returned forthwith if satisfied by the collection of the money or if ordered by the plaintiff or his attorney indorsed thereon.

RULE 655 - Return of Execution by Mail
When an execution is placed in the hands of an officer of a county other than the one in which the judgment is rendered, return may be made by mail; but money cannot be thus sent except by the direction of the party entitled to receive the same or his attorney of record.
EXAMPLES
1. An officer making a levy on personal property must take possession thereof. *Beaurline v. Sinclair Refining Co., 191 S.W. 2d 774*
2. Under a general execution, all nonexempt property of the defendant in execution to the extent necessary to satisfy the judgment is liable to seizure and sale. *Miller v. Dunagan, 123 S.W. 2d 363*
3. Requisites of a sale under execution are a valid judgment, a proper levy, a sale, and the payment of the consideration. *Burnam v. Blocker, 247 S.W. 2d 432*
4. Where execution sale was held after return date stated in writ of execution, the sale was void and passed no title to purchaser - - - - - *Smith v. Adams, 333 S.W. 2d 892*
5. Sheriff is not required to call out bid three times at sheriff's sale, and attorney for judgment creditor need not be present at the sale. *Brimberry v. First State Bank of Avinger, 500 S.W. 2d 675*
6. Where sale by sheriff under execution issued on judgment was, in effect, little more than a private sale not made at the time, place, or in the manner required by law, the sale was void. *Nebletet v. Slosson, 223 S.W. 2d 938*
7. Where judgment creditor becomes purchaser at execution sale, judgment creditor may apply amount of his bid as a credit on his judgment. *Prudential Corp. v. Baznman, 512 S.W. 85*
8. Wrongful levy upon exempt property constitutes a "trespass." *Wollner v. Darnell, 94 S.W. 2d 1225*

5.
GARNISHMENT
TEXAS CIVIL PRACTICE AND REMEDIES CODE

In general, a writ of garnishment is a process directed to one who has money or property in his possession belonging to the defendant, ordering such third person not to deliver or pay it to the defendant, but to hold it until the court determines who gets possession of the property. Rule 658 allows for the issuance at anytime during the suit. This allows issuance as a pre or post judgment writ. The grounds for a garnishment are set out in the Civil Practices and Remedies Code.

63.001 - Grounds
A writ of garnishment is available if:

1. an original attachment has been issued;
2. a plaintiff sues for a debt and makes an affidavit stating that:
(A) the debt is just, due, and unpaid;
(B) within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt; and
(C) the garnishment is not sought to injure the defendant or the garnishee; or
3. a plaintiff has a valid, subsisting judgment and makes an affidavit stating that, within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment.

63.002 - Who May Issue
The clerk of a district or county court or a justice of the peace may issue a writ of garnishment returnable to his court.

63.003 - Effect of Service
(a) After service of a writ of garnishment, the garnishee may not deliver any effects or pay any debt to the defendant. If the garnishee is a corporation or joint-stock company, the garnishee may not permit or recognize a sale or transfer of shares or an interest alleged to be owned by the defendant.
(b) A payment, delivery, sale, or transfer made in violation of Subsection (a) is void as to the amount of the debt, effects, shares, or interest necessary to satisfy the plaintiff's demand.

63.004 - Current Wages Exempt
Except as otherwise provided by state or federal law, current wages for personal service are not subject to garnishment. The garnishee shall be discharged from the garnishment as to any debt to the defendant for current wages.
NOTE: A writ of withholding on disposable earning has priority over any garnishment, attachment, execution or other assignments or orders. See 158.008, Family Code. Wages may be garnished for child support in Texas.

63.007 - Garnishment of Funds Held in Inmate Trust Fund
(a) A writ of garnishment may be issued against an inmate trust fund held under the authority of the Texas Department of Criminal Justice under Section 501.014, Government Code, to encumber money that is held for the benefit of an inmate in the fund.
(b) The state's sovereign immunity to suit is waived only to the extent necessary to authorize a garnishment action in accordance with this section.

63.008 - Financial Institution as Garnishee
Service of a writ of garnishment on a financial institution named as the garnishee in the writ is governed by Section 59.008, Finance Code.
NOTE: Section 59.008 of the Finance Code provides:
(a) A claim against a customer of a financial institution shall be delivered or served as otherwise required or permitted by law at the address designated as the address of the registered agent of the financial institution in a registration filed with the secretary of state pursuant of Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution.

(b) If a financial institution files a registration statement with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution, a claim against a customer of the financial institution is not effective as to the financial institution if the claim is served or delivered to an address other than that designated by the financial institution in the registration as the address of the financial institution's registered agent.
(c) A financial institution that does not file a registration with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, of Section 201.103, with respect to a Texas financial institutional, is subject to service or delivery of claims against customers of the financial institution as otherwise provided by law.

TEXAS RULES OF THE COURT
RULE 658 - Application for Writ of Garnishment and Order (Excerpts)
Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for a writ of garnishment. - - - - - - - - - The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

RULE 658a - Bond for Garnishment
NOTE: Bond is to be filed with the officer authorized to issue such writ if pre judgment writ.

RULE 659 - Case Docketed
When the foregoing requirements of these rules have been complied with, the judge, or clerk, or justice of the peace, as the case may be, shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant; and shall immediately issue a writ of garnishment directed to the garnishee, commanding him to appear before the court out of which the same is issued at or before 10 o'clock a.m. of the Monday next following the expiration of twenty days from the date the writ was served, if the writ is issued out of the district or county court; or the Monday next after the expiration of ten days from the date the writ was served, if the writ is issued out of the justice court. The writ shall command the garnishee to answer under oath upon such return date what, if anything, he is indebted to the defendant, and was when the writ was served, and what effects, if any, of the defendant he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the defendant or have effects belonging to him in their possession.

RULE 661 - Form of Writ
The following form of writ may be used:
"The State of Texas.
To E.F., Garnishee, greetings:
Whereas, in the _____Court of _____County (if a justice court, state also the number of the precinct), in a certain cause wherein A.B. is plaintiff and C.D. is defendant, the plaintiff, claiming an indebtedness against the said C.D. of _____dollars, beside interest and costs of suit, has applied for a writ of garnishment against you, E.F.; therefore you are hereby commanded to be and appear before said court at _____in said county (if the

writ is issued from the county or district court, here proceed: 'at 10 o'clock a.m. on the Monday next following the expiration of twenty days from the date of service hereof.' If the writ is issued from a justice of the peace court, here proceed: 'at or before 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service hereof.' In either event, proceed as follows:) then and there to answer upon oath what, if anything, you are indebted to the said C.D., and were when the writ was served upon you, and what effects, if any, of the said C.D. you have in your possession and had when this writ was served, and what other persons, if any, within your knowledge, are indebted to the said C.D. or have effects belonging to him in their possession. You are further commanded NOT to pay to defendant any debt or to deliver to him any effects, pending further order of this court. Herein fail not, but make due answer as the law directs."

RULE 662 - Delivery of Writ

The writ of garnishment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

RULE 663 - Execution and Return of Writ

The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

RULE 663a - Service of Writ on Defendant

The defendant shall be served in any manner prescribed for service of citation or as provided in Rule 21a with a copy of the writ of garnishment, the application, accompanying affidavits and orders of the court as soon as practicable following the service of the writ. There shall be prominently displayed on the face of the copy of the writ served on the defendant, ***in ten-point type** and in a manner calculated to advise a reasonable attentive person of its contents, the following:

*****"To_____, Defendant:

You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

RULE 664 - Defendant May Replevy (Excerpts)

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ. payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property or indebtedness sought to be replevied (to be estimated by the officer's), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which maybe rendered against him in such action.- - - - - - - - - - - - - -

On reasonable notice to the opposing party (which maybe less than three days) the defendant

shall have the right to move the court, for substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

RULE 668 - Judgment When Garnishee is Indebted

Should it appear from the answer of the garnishee or should it be otherwise made to appear and be found by the court that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount is in excess of the amount of the plaintiff's judgment against the defendant with interest and costs, in which case, judgment shall be rendered against the garnishee for the full amount of the judgment already rendered against the defendant, together with interest and costs of the suit in the original case and also in the garnishment proceedings. **To take possession of property the Garnishee has in his possession belonging to the defendant an execution (for Delivery of Certain Property) is issued to the Garnishee to deliver that property to the officer.**

RULE 669 - Judgment for Effects

Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, including any certificates of stock in any corporation or joint stock company, **the court shall render a decree ordering sale of such effects under execution in satisfaction of plaintiff's judgment and directing the garnishee to deliver them, or so much thereof as shall be necessary to satisfy plaintiff's judgment, to the proper officer for that purpose.**

RULE 670 - Refusal to Deliver Effects

Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding rule, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause upon a date to be fixed by the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

RULE 672 - Sale of Effects

The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the officer making such sale shall execute a transfer of such effects or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold.

RULE 675 - Docket and Notice
The clerk of the court or the justice of the peace, on receiving certified copies filed in the county of the garnishee's residence under the provisions of the statutes, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and issue a notice to the garnishee, stating that his answer has been so controverted, and that such issue will stand for trial on the docket of such court. Such notice shall be directed to the garnishee, be dated and tested as other process from such court, and served by delivering a copy thereof to the garnishee. It shall be returnable, if issued from the district or county court, at ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of its service; and if issued from the justice court, to the next term of such court convening after the expiration of twenty days after the service of such notice.

RULE 679 - Amendment
Clerical errors in the affidavit, bond, or writ of garnishment or the officer's return thereof may upon application in writing to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize by an order in the minutes of the court (or noted on the docket of the justice of the peace), provided such amendment appears to the judge or justice to be in furtherance of justice.
EXAMPLES
1. "Garnishment" is a statutory proceeding whereby the property, money, or credits of a debtor in the possession of another are applied to the payment of a debt. *Jamison v. National Loan Investors, L.P. 4 S.W. 3rd 465*
2. Under the rule, an officer's return of a writ of garnishment is governed by the same rules applicable to the return of citation. *Curry Motor Freight, Inc. v. Ralston Purina Co. 565 S.W. 105*
3. Sheriff or constable executing a writ of garnishment is not an "agent" of either party, since the sheriff or constable is not subject to the parties control; Rules of Civil Procedure provide that only a sheriff or constable may deliver the writ to the garnishee, and the sheriff or constable carries out a duty prescribed by the state constitution or the legislature when executing a writ. *Jamison v. National Loan Investors, L.P. 4 S.W. 3rd 465*
4. No control or custody over debtor's property can be gained by debtor's answer in garnishment proceeding **without writ of garnishment being properly served on debtor.**

6.
INJUNCTION

The Writ of Injunction is a writ that is issued by the court to a defendant and directs him to desist and refrain form the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.
A temporary Writ of Injunction is issued by the court at the institution of a suit, to restrain the defendant from doing or continuing some act, the right to which is in dispute, which

may either be dismissed or made permanent, as soon as the rights of the parties are determined.

TEXAS RULES OF THE COURT
RULE 683 - Form and Scope of Injunction or Restraining Order (Excerpts)
Every order granting an injunction and every restraining order shall set forth the reasons for its issuance. - - - - - - - -

RULE 686 - Citation (Excerpts)
Upon the filing of such petition and order not pertaining to a suit pending in the court, the clerk of such court shall issue citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court: - - - - -

RULE 687 - Requisites of Writ
The writ of injunction shall be sufficient if it contains substantially the following requisites:
(a) Its style shall be, "The State of Texas".
(b) It shall be directed to the person or persons enjoined.
(c) It must state the names of the parties to the proceedings, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.
(d) It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.
(e) If it is a temporary restraining order, it shall state the day and time set for hearing, which shall not exceed fourteen days from the date of the court's order granting such temporary restraining order; but if it is a ***temporary injunction***, issued after notice, it shall be made ***returnable*** at or before ten o'clock a.m. of the Monday next after the expiration of ***twenty days from the date of service*** thereof, as in the case of ordinary citations.
(f) It shall be dated and signed by the clerk officially and attested with the seal of the office and the date of its issuance must be indorsed thereon.

RULE 688 - Clerk to Issue Writ
When the petition, order of the judge and bond have been filed, the clerk shall issue the temporary restraining order or temporary injunction, as the case may be, in conformity with the terms of the order, and **deliver the same to the sheriff or any constable of the county of the residence of the person enjoined, or to the applicant, as the latter shall direct.** If several persons are enjoined, residing in different counties, the clerk shall issue such additional copies of the writ as shall be requested by the applicant. *The clerk shall retain a copy of the temporary restraining order injunction in the court's file.*

RULE 689 - Service and Return
The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. ***The officer shall complete and file a return in accordance with Rule 107. The Civil Practices and Remedies Code Sec. 17.30 Return of Service sets minimum standards for the required information on a return.***

RULE 692 - Disobedience of Injunction
Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating what person is guilty of such disobedience and describing the acts constituting the same; **and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of any county, and requiring such officer to arrest the person therein named if found within his county and have him before the court of judge at the time and place named in such writ; or said court or judge may issue a show cause order, directing and requiring such person to appear on such date as may be designated and show cause why he should not be adjudged in contempt of court**. On return of such attachment or show cause order, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, may commit such person to jail without bail until he purges himself of such contempt, in such manner and form as the court or judge may direct.
Note: When a writ of injunction or writ of attachment is delivered to the sheriff or constable it is suggested that you first should read what the court is requiring you to do. Proceed to carry the order out and make a return as you would ordinarily do on executing the writ. There are time limits and you need to meet those deadlines.

CHAPTER 8
JUDGMENTS - TURN OVER ORDER
TEXAS CIVIL PRACTICE AND REMEDIES CODE

31.002 - Collection of Judgment Through Court Proceeding (excerpts)
(a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that:
(1) cannot readily be attached or levied on by ordinary legal process; and
(2) is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.
(b) The court may:
(1) order the judgment debtor to **turn over** nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a **designated sheriff or constable for execution;**
(2) otherwise apply the property to the satisfaction of the judgment; or
(3) appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditors to the extent required to satisfy the judgment.
(c)(d)&(e) - - - - - -
(f) A court may not enter or enforce an order under this section that requires the turnover of the proceeds of, or the disbursement of, property exempt under any statute, including Section 42.0021, Property Code. This subsection does not apply to the enforcement of a child support obligation or a judgment for past due child support.

(g) - - - -
(h) A court may enter or enforce an order under this section that requires the turnover or nonexempt property without identifying in the order the specific property subject to turnover.

31.0025 - Authority of Court to Order Turnover of Wages
(a) Notwithstanding any other law, a court may not, at any time before a judgment debtor is paid wages for personal services performed by the debtor, enter or enforce and order that requires the debtor or any other person to turn over the wages for the satisfaction of the judgment.
(b) This section applies to wages in any form, including paycheck, cash, or property.
(c) This section does not apply to the enforcement of a child support obligation or a judgment for past due child support.

31.010 - Turnover by Financial Institution
(a) A **financial institution** that receives a request to **turn over assets** or financial information of a judgment debtor to a judgment creditor or a receiver under a turnover order or receivership under Section 31.002 shall be provided and may rely on:
(1) a certified copy of the order or injunction of the court; or
(2) a certified copy of the order of appointment of a receiver under Section 64.001, including a certified copy of:
(A) any document establishing the qualification of the receiver under Section 64.021;
(B) the sworn affidavit under Section 64.022; and
(C) the bond under Section 64.023.
(b) A financial institution that complies with this section is not liable for compliance with a court order, injunction, or receivership authorized by Section 31.002 to:
(1) the judgment debtor;
(2) a party claiming through the judgment debtor;
(3) a co-depositor with the judgment debtor; or
(4) a co-borrower with the judgment debtor.
(c) A financial institution that complies with this section is entitled to recover reasonable costs, including copying costs, research costs, and, if there is a contest, reasonable attorney's fees.
(d) In this section, "financial institution" means a state or national bank, state or federal savings and loan association, state or federal savings bank, state or federal credit union, foreign bank, foreign bank agency, or trust company.

CHAPTER 9
EVICTIONS
TEXAS PROPERTY CODE

Forcible Entry and Detainer and Forcible Detainer as defined in chapter 24 of the property code are the grounds for the eviction of a tenant. Once the filing takes place it is an Eviction Suit. The Justice of the Peace new Rule 510 governs the eviction suits.

24.001 - Forcible Entry and Detainer
(a) A person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.
(b) For the purpose of this chapter, a forcible entry is:
(1) an entry without the consent of the person in actual possession of the property;
(2) an entry without the consent of a tenant at will or by sufferance; or
(3) an entry without the consent of a person who acquired possession by forcible entry.

24.002 - Forcible Detainer
(a) A person who refused to surrender possession of real property on demand commits a forcible detainer if the person:
1. is a tenant or a subtenant willfully and without force holding over after the termination of the tenant's right of possession;
2. is a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease; or
3. is a tenant of a person who acquired possession by forcible entry.
(b) The demand for possession must be made in writing by a person entitled to possession of the property and must comply with the requirements for notice to vacate under Section 24.005.

24.004 - Jurisdiction; Dismissal
(a) Excerpt as provided by Subsection (b), a justice court in the precinct in which the real property is located has jurisdiction in eviction suits, Rule 510.03(b)Where Filed-Pct. Where the property is located.

24.005 - Notice to Vacate Prior to Filing Eviction Suit
If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least 3 days written notice to vacate the premises before the landlord files the eviction suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.

Notice to Vacate (Standard notice 3 day) (written notice)
Shorter or longer notice according to written agreement (Written notice)
If tenant by Forcible Entry-Written or verbal to vacate immediate
If a foreclosure on the property written notice of 30 days
If landlord will use an attorney-written notice of 10 days.

Rule 510.4 ISSUANCE, SERVICE AND RETURN OF CITATION

(a) Issuance of Citation; Contents. When a petition is filed, the court must immediately issue citation directed to each defendant. The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) state the date of filing of the petition;

(5) state the date of issuance of the citation;

(6) state the file number and names of parties;

(7) state the plaintiffs cause of action and relief sought;

(8) be directed to the defendant;

(9) state the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;

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

(11) notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition;

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

(13) contain all warnings required by Chapter 24 of the Texas Property Code; and

(14) include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(b) Service and Return of Citation.

(1) Who May Serve. Unless otherwise authorized by written court order, citation must be served by a sheriff or constable.

(2) Method of Service. The constable, sheriff, or other person authorized by written court order receiving the citation must execute it by delivering a copy with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached with some person, other than the plaintiff, over the age of 16 years,

at the defendant's usual place of residence, at least 6 days before the day set for trial.

(3) Return of Service. At least one day before the day set for trial, the constable, sheriff, or other person authorized by written court order must complete and file a return of service in accordance with Rule 501.3 with the court that issued the citation.

(c) Alternative Service by Delivery to the Premises.

(1) When Allowed. The citation may be served by delivery to the premises if:

(A) the constable, sheriff, or other person authorized by written court order is unsuccessful in serving the citation under (b);

(B) the petition lists all home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; and

(C) the constable, sheriff, or other person authorized files a sworn statement that it has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located, stating the times and places of attempted service.

(2) Authorization. The judge must promptly consider a sworn statement filed under (1)(C) and determine whether citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service.

(3) Method. If the judge authorizes service by delivery to the premises, the constable, sheriff, or other person authorized by written court order must, at least 6 days before the day set for trial:

(A) deliver a copy of the citation with a copy of the petition attached to the premises by placing it through a door mail chute or slipping it under the front door; if neither method is possible, the officer may securely affix the citation to the front door or main entry to the premises; and

(B) deposit in the mail a copy of the citation with a copy of the petition attached,

addressed to defendant at the premises and sent by first class mail.

(4) Notation on Return. The constable, sheriff, or other person authorized by written

court order must note on the return of service the date the citation was delivered and

the date it was deposited in the mail.

WRIT OF POSSESSION
Texas Property Code 24.061-TRCP 510.08

(a) A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. In this chapter, "premises" means the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally.
(b) A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure TRCP 510.5 and judgment for possession is thereafter granted by default.
(c) The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.
(d) The writ of possession shall order the officer executing the writ to:
(1) post a written warning of at least 8 ½ by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and
(2) **when the writ is executed:**
(A) deliver possession of the premises to the landlord;
(B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;
(C) instruct tenant to remove or to allow the landlord, the landlord's representative, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and
(D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and **not while it is raining, sleeting, or snowing.----*<u>See law update page 172 addition of (D-1)</u>***
(e) The writ of possession shall authorized the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.
(f) The officer may not require the landlord to store the property.
(g) The writ of possession shall contain notice to the officer that under Section 7.003,

Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.
(h) A sheriff or constable may use reasonable force in executing a writ under this section.

24.0062 - Warehouseman's Lien
(a) If personal property is removed from a tenant's premises as the result of an action brought under this chapter and stored in a bonded or insured public warehouse, the warehouseman has a lien on the property to the extent of any reasonable storage and moving charges incurred by the warehouseman. The lien does not attach to any property until the property has been stored by the warehouseman.
NOTE: (b)(c)(d)(e)(f)(g)(h)(i)(j)(k) does not affect the duties of the sheriff or constable but merely set out the rights of the warehouseman and the tenant. If you desire to understand these rights you will need to obtain a complete copy of 24.0062. If you buy a copy of the Texas Property Code or have access to the Black Statutes they will contain this information.
24.011 – Non lawyer Representation
In eviction suits in justice court for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any eviction suit in justice court, an authorized agent requesting or obtaining a default judgment need not be an attorney.

TEXAS RULES OF THE COURT
RULE 510.3(d) A claim for rent within the jurisdiction may be asserted in an eviction case.

LIEN
NOTE: There are three types of liens that a landlord may claim and they are as follows:
1. Agricultural lien (54.001, Texas Property Code)
2. Building lien (54.021, Texas Property Code)
3. Residential lien (54.041, Texas Property Code)
The sheriff or constable has no responsibility under these liens until the justice court issues a Distress Warrant. As to service of a Distress Warrant please refer to the section on this subject.
LANDLORD AND TENANT
NOTE: If you are interested in the laws applying to landlord and tenant please see Sections 91.001 etc. and 92.001. The sheriff or constable would be involved in the landlord and tenant relationship if a landlord has locked a tenant out of the leased premises. The tenant may regain possession of the premises as provided by Section 92.009, Texas Property Code.
(a) The tenant must file with the justice court in the precinct in which the rental premises are located a sworn complaint for reentry, specifying the facts of the alleged unlawful lockout by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful lockout.

(b) If the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful lockout has likely occurred, the justice may issue, ex parte, a writ of reentry that entitles the tenant to immediate and temporary possession of the premises, pending a final hearing on the tenant's sworn complaint for reentry.
(c) The writ of reentry must be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer action. A sheriff or constable may use reasonable force in executing a writ of reentry under this section.
(d) The landlord is entitled to a hearing on the tenant's sworn complaint for reentry. The writ of reentry must notify the landlord of the right to a hearing. The hearing shall be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.
(e) & (f) apply to the landlord.
(g) If a writ of possession is issued, it supersedes a writ of reentry. - - -

CHAPTER 10
FINANCE CODE
INTEREST RATES TO BE CHARGED ON JUDGMENT

304.001 - Interest Rate Required in Judgment
A money judgment of a court in this state must specify the post-judgment interest rate applicable to that judgment.
NOTE: The court must specify in his judgment the post-judgment interest rate if it is a money judgment. It is important that the process server read the judgment and determine if he is required to collect post-judgment interest. The rate of interest

304.002 - Judgment Interest Rate: Interest Rate or Time Price Differential in Contract
A money judgment of a court of this state on a contract that provides for interest or time price differential earns post-judgment interest at a rate equal to the lessor of:
(1) the rate specified in the contract, which may be a variable rate; or
(2) 18 percent a year.

304.003 - Judgment Interest Rate: Interest Rate or Time Price Differential Not in Contract
(a) A money judgment of a court of this state to which Section 304.002 does not apply, including court costs awarded in the judgment and prejudgment interest, if any, earns post judgment interest at the rate determined under this section.
(b) On the 15th day of each month, the consume credit commissioner shall determine the post-judgment interest rate to be applied on a money judgment rendered during the succeeding calendar month.
(c) The post-judgment interest rate is:
(1) the prime rate as published by the Board of Governors of the Federal Reserve System on the date of computation.

(2) 5 percent a year if the prime rate published by the Board of Governors of the Federal Reserve System described by Subdivision (1) is less than 5 percent; or
(3) 15 percent a year if the prime rate published by the Board of Governors of the Federal Reserve System described by Subdivision (1) is more than 15 percent.

304.004 - Publication of Judgment Interest Rate
The consumer credit commissioner shall send to the secretary of state the post-judgment interest rate for publication, and the secretary shall publish the rate in the Texas Register. **(www.sos.state.tx.us) or call (Consumer Credit Commissioner at 1- 800-538-1579).**

304.005 - Accrual of Judgment Interest
(a) Except as provided by Subsection (b), post-judgment interest on a **money judgment** of a court in this state accrues during the period beginning on the date the judgment is rendered and ending on the date the judgment is satisfied.
(b) If a case is appealed and a motion for extension of time to file a brief is granted for a party who was a claimant at trial, interest does not accrue for the period of extension.

304.006 - Compounding of Judgment Interest
Post-judgment interest on a judgment of a court in this state compounds annually.

304.007 - Judicial Notice of Judgment Interest Rate
A court of this state shall take judicial notice of a published post-judgment interest rate.
NOTE: Check with your bank, high school math teacher or county auditor on how to figure compounding of judgment interest, if you have a question.

CHAPTER 11
TEXAS PROPERTY CODE
MANUFACTURED HOME TENANCIES

Most of this legislation applies to the landlord and the tenant and requires no action by the Sheriff.
There appears to be two sections that a sheriff would be interested in. One that would apply to a governmental agency for informational purposes (Sec. 94.010) and the other by the sheriff to carry out a court order as it applies to "Eviction)(Sec. 94.256).
Foreclosures (Writ of Possession for Particular property) are Carried out Rule 308, You turnover possession of the manufactured home to the plaintiff. You don't have to move it.

CHAPTER 12
TAX CODE - PROPERTY
DELINQUENT TAX SALES

From time to time you will be called upon by the Tax Assessor-Collector to execute a "Tax Warrant which he/she will obtain from a court of competent jurisdiction. Tax warrants are generally are issued for personal property, but may also be issued for real

property. In some areas the collector and the officer have joint responsibility, however the collector will be in charge for some issues.
It is important that you understand the statutes which are set out below in order to complete a delinquent tax sale. The officer should study chapter 33 and 34 of the Tax Property Code. These two chapters are were most of the procedures are found for the seizure and sale for delinquent taxes. Either the County Attorney or the Tax Attorney hired by the county should be.

SEIZURE OF PERSONAL PROPERTY
33.21 - Property Subject to Seizure
(a) A person's personal property is subject to seizure for the payment of a delinquent tax, penalty and interest he owes a taxing unit on property.
(b) A person's personal property is subject to seizure for the payment of a tax imposed by taxing unit on the person's property before the tax becomes delinquent if:
(1) the collector discovers that property on which the tax has been or will be imposed is about to be:
(A) removed from the county; or
(B) sold in a liquidation sale in connection with the cessation of a business; and
(2) the collector knows of no other personal property in the county from which the tax may be satisfied.
(c) Current wages in the possession of an employer are not subject to seizure
(d) In this subchapter, "personal property" means:
(1) tangible personal property;
(2) cash on hand;
(3) notes or accounts receivable, including rents and royalties;
(4) demand or time deposits; and
(5) certificates of deposit.
33.22 - Institution of Seizure
(a) At any time after a tax becomes delinquent, a collector may apply for a tax warrant to any court in any county in which the person liable for the tax has personal property. If more than one collector participates in the seizure, all may make a joint application.
(b) A collector may apply at any time for a tax warrant authorizing seizure of property as provided by Subsection (b) of Section 33.21 of this code.
(c) The court shall issue the tax warrant if the applicant shows by affidavit that:
(1) the person whose property he intends to seize is delinquent in the payment of taxes, penalties, and interest in the amount stated in the applications; or
(2) taxes in the stated amount have been imposed on the property or taxes in an estimated amount will be imposed on the property, the applicant knows of no other personal property the person owns in the county from which the tax may be satisfied, and the applicant has reason to believe that:
(A) the property owner is about to remove the property from the county; or
(B) the property is about to be sold at a liquidation sale in connection

with the cessation of a business.
(d) A collector is entitled to recover attorney's fees in an amount equal to the compensation specified in the contract with the attorney if:
(1) recovery of the attorney's fees is requested in the application for the tax warrant;
(2) the taxing unit served by the collector contracts with an attorney under Section 6.30;
(3) the existence of the contract and the amount of attorney's fees that equals the compensation specified in the contract are supported by the affidavit of the collector; and
(4) the tax sought to be recovered is not subject to the additional penalty under Section 33.07 or 33.08 at the time the application is filed.
(e) If a taxing unit is represented by an attorney who is also an officer or employee of the taxing unit is entitles to recover attorney's fees in an amount equal to 15 percent of the total amount of delinquent taxes, penalties, and interest that the property owner owes the taxing unit.

33.23 - Tax Warrant

(a) A tax warrant shall direct a peace officer in the county and the collector to seize as much of the person's personal property as may be reasonably necessary for the payment of all taxes, penalties, interest, and attorney's fees including in the application and all costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to the officer executing the warrant the name and the address if known of any other person having an interest in the property.
(b) A bond may not be required of a taxing unit for issuance or delivery of a tax warrant and a fee or court cost may not be charged for issuance or delivery of a warrant.
(c) After a tax warrant is issued, the collector or peace officer shall take possession of the property pending its sale. The person against whom a tax warrant is issued or another person having possession of property of the person against whom a tax warrant is issued shall surrender the property on demand. Pending the sale of the property, the collector or peace officer may secure the property at the location where it is seized or may move the property to another location.
(d) A person who possesses personal property owned by the person against whom a tax warrant is issued and who surrenders the property on demand is not liable to any person for the surrender. At the time of surrender, the collector shall provide the person surrendering the property a sworn receipt describing the property surrendered.
(e) Subsection (d) does not create an obligation on the part of a person who surrenders property owned by the person against whom a tax warrant is issued that exceeds or materially differs from the person's obligation to the person against whom the tax warrant is issued.

33.24 - Bond for Payment for Taxes

A person may prevent seizure of property or sale of property seized by delivering to <u>the collector</u> a cash or security bond conditioned on payment of the tax before delinquency. <u>The bond must be approved by the collector in an amount determined by him</u>, but he may not require an amount greater than the amount of tax if imposed or the collector's reasonable estimate of the amount of tax if not yet imposed.

33.25 - Tax Sale: Notice; Method; Disposition of Proceeds

(a) After a seizure of personal property, the collector shall make reasonable inquiry to determine the identity and to ascertain the address of any person having an interest in the property other than the person against whom the tax warrant is issued. The collector shall provide in writing the name and address of each other person the collector identifies having an interest in the property to the peace officer charged with executing the warrant. <u>The peace officer shall deliver as soon as possible a written notice stating the time and place of the sale</u> and briefly describing the property seized to the person against whom the warrant is issued and to any other person having an interest in the property whose name and address the collector provided to the peace officer. The posting of the notice and sale of the property shall be conducted:

(1) in a county other than a county to which Subdivision (2) applies, by the peace officer in the manner required for the sale under execution of personal property; or

(2) <u>in a county having a population of three million or more:</u> *<u>(Harris Co)</u>*

(A) by the peace officer or collector, as specified in the warrant, in the manner required for the sale under execution of personal property; or

(B) under agreement authorized by Subsection (b).

(b) The commissioners court of a county having a population of three million or more by official action may authorize a peace officer or the collector for the county charged with selling property under this subchapter by public auction to enter into an agreement with a person who holds an auctioneer's license to advertise the auction sale of the property and to conduct the auction sale of the property. The agreement may provide for on-line bidding and sale.

(c) The commissioners court of a county that authorizes a peace officer or the collector for the county to enter into an agreement under Subsection (b) may by official action authorize the peace office or collector to enter into an agreement with a service provider to advertise the auction and to conduct the auction sale of the property or to accept bids during the auction sale of the property under Subsection (b) using the Internet.

(d) The terms of an agreement entered into under Subsection (b) or (c) must be approved in writing by the collector for each taxing unit entitled to receive proceeds from the sale of the property. An agreement entered into under Subsection (b) or (c) is presumed to be commercially reasonable, and the presumption may not be rebutted by any person.

(e) Failure to send or receive a notice require by this section does not affect the validity of the sale or title to the seized property.

(f) The proceeds of s sale of property under this section shall be applied to:

(1) any compensation owed to or any expense advanced by the license auctioneer under an agreement entered into under Subsection (b) or a service provider under an agreement entered into under Subsection (c);

(2) all usual costs, expenses, and fees of the seizure and sale, payable to the peace officer conducting the sale;

(3) all additional expenses incurred in advertising the sale or in removing, storing, preserving, or safeguarding the seized property pending its sale;

(4) all usual court costs payable to the clerk of the court that issued the tax warrant; and

(5) taxes, penalties, interest, and attorney's fees including in the application for warrants.

(g) The peace officer or licensed auctioneer conducting the sale shall pay all proceeds for the sale to the collector designated in the tax warrant for distribution as required by Subsection (f).
(h) After a seizure of person property defined by Section 33.21(d)(2)-(5), the collector shall apply the seized property toward the payment of the taxes, penalties, interest, and attorney's fees included in the application for warrant and all costs of the seizure as required by Subsection (f).
(i) After a tax warrant is issued, the seizure or sale of the property maybe canceled and terminated at any time by the applicant or an authorized agent or attorney of the applicant.
NOTE: A peace officer, as defined by article 2.12 of the CCP, may execute a tax warrant for the seizure of personal property under section 33.23 of the Tax Code, while a sheriff or constable is the only type of peace officer that may execute a tax warrant for seizure of real property under Section 33.93 of the same code. Likewise, any peace officer may seize personal property that is the subject of a tax warrant, while a sheriff or constable may seize real property. Seizure requires possession or control of the property. A peace officer who seizes personal property is authorized, but not required, by statute to relinquish possession to the tax assessor-collector. On the other hand, Section 33.93 requires the sheriff or constable to turn the possession of seized real property over to the assessor-collector.
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OpAtty.Gen.2003, No.GA-0140.
Section 33.23 does not specify who is to prepare the inventory or personal property seized in accordance with a tax warrant. Consistent with case law and with practical considerations, the officer who executes the warrant must prepare the inventory.
OpAtty.Gen.2003, No.GA-0140.
DELINQUENT TAX SUITS*---*See update starting on page 172*-*Bidder registration
33.41 - Suit to Collect Delinquent Tax (Excerpts)
(a) at any time after its tax on property becomes delinquent, a taxing unit may file suit to foreclose the lien securing payment of the tax, to enforce personal liability for the tax or both. The suit must be in a court of competent jurisdiction for the county in which the tax was imposed.
(b) - (h) - - - - -
33.50 - Adjudged Value
(a) - - - -
(b) if the judgment in a suit to collect a delinquent tax is for the foreclosure of a tax lien on property, the order of sale shall specify that the property may be sold to a tax unit that is a party to the suit or to any other person, other than a person owning an interest in the property or any party to the suit that is not a taxing unit, for the market value of the property stated in the judgment or the aggregate amount of the judgments against the property, whichever is less.
(c) The order of sale shall also specify that the property may not be sold to a person owning an interest in the property or to a person who is a party to the suit other than a taxing unit unless:
(1) that person is the highest bidder at the tax sale; and
(2) the amount bid by the person is equal to or greater than the aggregate amount of the judgments against the property, including all costs of suit and

sale.

33.51 - Writ of Possession

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall provide for the issuance by the clerk of said court of a writ of possession to the purchaser at the sale or to the purchaser's assigns no sooner than 20 days following the date on which the purchaser's deed from the sheriff or constable is filed of record.

(b) The officer charged with executing the writ shall place the purchaser or the purchaser's assigns in possession of the property described in the purchaser's deed without further order from any court and in the manner provided by the writ, subject to any notice to vacate that may be required to be given to a tenant under Section 24.005(b), Property Code.

(c) The writ of possession shall order the officer executing the writ to:

(1) post a written warning that is at least 8-1/2 by 11 inches on the exterior of the front door of the premises notifying the occupant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning that is not sooner than the 10th day after the date the warning is posted; and

(2) on execution of the writ:

(A) deliver possession of the premises to the purchaser or the purchaser's assigns;

(B) instruct the occupants to immediately leave the premises and, if the occupants fail or refuse to comply, physically remove them from the premises; and

(C) instruct the occupants to remove, or to allow the purchaser or purchaser's assigns, representatives, or other persons acting under the officer's supervision to remove, all personal property from the premises; and

(D) place, or have an authorized person place, the removed personal property outside the premises at a nearby location, but not so as to block a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

(d) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, all or part of the personal property at no cost to the purchaser, the purchaser's assign, or the officer executing the writ. The officer may not require the purchaser or the purchaser's assigns to store the personal property.

(e) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(f) The warehouseman's lien on stored property, the officer's duties, and the occupants' right of redemption as provided by Section 24.0062, Property Code, are all applicable with respect to any personal property that is removed under Subsection (d).

(g) A sheriff or constable may use reasonable force in executing a writ under this section.

(h) If a taxing unit is a purchaser and is entitled to a writ of possession in the taxing

unit's name:
(1) a bond may not be required of the taxing unit for issuance or delivery of a writ of possession; and
(2) a fee of court cost may not be charged for issuance or delivery of a writ of possession
(i) In this section:
(1) "Premises" means all of the property described in the purchaser's deed, including the buildings, dwellings, or other structures located on the property.
(2) "Purchaser" includes a taxing unit to which property is bid off under Section 34.01(j).
33.53 - Order of Sale; Payment Before Sale
(a) If judgment in a suit to collect a delinquent tax is for foreclosure of a tax lien, the court shall order the property sold in satisfaction of the amount of the judgment.
(b) On application by a taxing unit that is a party to the judgment, the district clerk shall prepare an order to an officer authorized to conduct execution sales ordering the sale of the property. If more than one parcel of property is included in the judgment, the taxing unit may specify particular parcels to be sold. A taxing unit may request more than one order of sale as necessary to collect all amounts due under the judgment.
(c) An order of sale:
(1) shall be returned to the district clerk as unexecuted if not executed before 181st day after the date the order is issued; and
(2) may be accompanied by a copy of the judgment and a bill of costs attached to the order and incorporate the terms of the judgment or bill of costs by reference.
(d) A judgment or a bill of costs attached to the order of sale is not required to be certified.
(e) If the owner pays the amount of the judgment before the property is sold, the taxing unit shall:
(1) release the tax lien held by the taxing unit on the property; and
(2) file for record with the clerk of the court in which the judgment was rendered a release of the lien.
SEIZURE OF REAL PROPERTY
33.91 - Property Subject to Seizure by Municipality
(a) After notice has been provided to a person, the person's real property, whether improved or unimproved, is subject to seizure by a municipality for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property and the amount secured by a municipal health or safety lien on the property if: (Abandoned property for at least one year, etc.).
(The city must meet certain requirements of the statute and if the municipality determines that seizure of the property under this subchapter for the payment of the delinquent taxes, penalties, and interest, and of a municipal health and safety lien on the property, would be in the best interest of the municipality and the other taxing units after determining that the sum of all outstanding tax and municipal claims against the property plus the estimated costs under Section 33.48 of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale).
33.911 - Property Subject to Seizure by County
(a) After notice has been provided to a person, the person's real property, whether

improved or unimproved, is subject to seizure by a county for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property if: (Abandoned property for at least one year, etc.).

(The county must meet certain requirements of the statute and if the county tax assessor determines that seizure of the property would be in the best interest of the county he/she may proceed to obtain a Tax Warrant).

33.912 - Notice

(a) A person is considered to have been provided the notice required by Sections 33.91 and 33.911 if by affidavit or otherwise the collector shows that the assessor or collector for the municipality or county mailed the person each bill for municipal or county taxes required to be sent the person by Section 31.01:

(1) in each of the five preceding years, if the taxes on the property are delinquent for each of those years; or

(2) in each of the three preceding years; if:

(A) the taxes on the property are delinquent for each of those years; and

(B) a lien on the property has been created on the property in favor of the municipality for the cost of remedying a health or safety hazard on the property.

(b) If notice under Subsection (a) is not provided, the notice required by Section 33.91 or 33.911 shall be given by the assessor or the collector for the municipality or county, as applicable, by:

(1) serving, in the manner provided by Rule 21a, Texas Rules of Civil Procedure, a true and correct copy of the application for a tax warrant filed under the Section 33.92 to each person known, or constructively known through reasonable inquiry, to own or have an interest in the property;

(2) publishing in the English language a notice of the assessor's intent to seize the property in a newspaper published in the county in which the property is located if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners; or

(3) if required under the Subsection (g), posting in the English language a notice of the assessor's intent to seize the property if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners,

(c) A notice under Subsection (b)(1) shall be provided at the time of filing the application for a tax warrant and must be supported by a certificate of service appearing on the application in the same manner and form as provided by Rule 21a, Texas Rules of Civil Procedure. The notice is sufficient if sent to the person's last known address.

(d) A notice by publication or posting under Subsection (b) must substantially comply with this subsection. The notice must:

(1) be published or posted at least 10 days but not more than 180 days before the date the application for tax warrant under Section 33.92 is filed;

(2) be directed to the owners of the property by name, if known, or, if unknown, to "the unknown owners of the property described below";

(3) state that the assessor or collector intends to seize the property as abandoned property and that the property will be sold at public auction without further notice unless all delinquent taxes, penalties and interest are

paid before the sale of the property; and
(4) describe the property.
(e) A description of the property under Subsection (d)(4) is sufficient if it is the same as the property description appearing on the current tax roll for the county or municipality.
(f) A notice by publication or posting under Subsection (b) may relate to more than one property or to multiple owners of property.
(g) For publishing a notice under Subsection (b)(2), a newspaper may charge a rate that does not exceed the greater of two cents per word or an amount equal to the published word or line rate of that newspaper for the same class of advertising. If notice cannot be provided under Subsection (b)(1) and there is not a newspaper published in the county where the property is located, or a newspaper that will publish the notice for the rate authorized by this subsection, the assessor shall post the notice in writing in three public places in the county. One of the posted notices must be at the door of the county courthouse. Proof of the posting shall be made by affidavit of the person posting the notice or by the attorney for the assessor or collector.
(h) A person is considered to have been provided the notice under Section 33.91 or 33.911 in the manner provided by Subsection (b) if the application for the tax warrant under Section 33.92:
(1) contains the certificate of service as required by Subsection (b)(1);
(2) is accompanied by an affidavit on behalf of the applicable assessor or collector stating the fact of publication under Subsection (b)(2), with a copy of the published notice attached; or
(3) is accompanied by an affidavit of posting on behalf of the applicable assessor or collector under Subsection (g) stating the fact of posting and facts supporting the necessity of posting.
(i) A failure to provide, give, or receive a notice provided under this section does not affect the validity of a sale of the seized property or title to the property.
(j) The costs of publishing notice under this section are chargeable as costs and payable from the proceeds of the sale of the property.
33.92 - Institution of Seizure
(a) After property becomes subject to seizure under Section 33.91 or 33.911, the collector for a municipality or a county, as appropriate, may apply for a tax warrant to a district court in the county in which the property is located.
(b) - - -
(c) - - -
(d) - - -
33.93 - Tax Warrant
(a) A tax warrant shall direct the sheriff or a constable in the county and the collector for the municipality or the county to seize the property described in the warrant, subject to the right of redemption, for the payment of the ad valorem taxes, penalties, and interest owing on the property included in the application, any attorney fees included in the application as provided by Section 33.92(d), the amount secured by a municipal health or safety lien on the property included in the application, and the costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to a person executing the warrant the name and address if known of any other person having an

interest in the property.
(b) A bond may not be required of a municipality or county for issuance or delivery of a tax warrant, and a fee or court cost may not be charged for issuance or delivery of the warrant.
(c) On issuance of a tax warrant, the collector shall take possession of the property pending its sale by the officer charged with selling the property.
33.94 - Notice of Tax Sale
(By municipality or county not the sheriff or constable. The date, time and place will also be in the Notice)
TAX SALES
34.01 - Sale of Property
(a) Real property seized under a tax warrant issued under Subchapter E, Chapter 33, or ordered sold pursuant to foreclosure of a tax lien shall be sold by the officer charged with selling the property, unless otherwise directed by the taxing unit that requested the warrant or order of sale or by an authorized agent or attorney for that unit. The sale shall be conducted in the manner similar property is sold under execution except as otherwise provided by the subtitle.
(b) On receipt of an order of sale of real property, the officer charged with selling the property shall endorse on the order the date and exact time when the officer received the order. The endorsement is a levy on the property without necessity for going upon the ground. The officer shall calculate the total amount due under the judgment, including all taxes, penalties, and interest, plus any other amount awarded by the judgment, court costs and the costs of the sale. The costs of a sale include the costs of advertising, and deed recording fees anticipated to be paid in connection with the sale of the property. To assist the officer in making the calculation, the collector of any taxing unit that is party to the judgment may provide the officer with a certified tax statement showing the amount of the taxes included in the judgment that remain due that taxing unit and all penalties, interest, and attorney fees provided by the judgment as of the date of the proposed sale. If a certified tax statement is provided to the officer, the officer shall rely on the amount included in the statement and is not responsible or liable for the accuracy of the applicable portion of the calculation. A certified tax statement is not required to be sworn to and is sufficient if the tax collector or the collector's deputy signs the statement.
(c) The officer charged with the sale shall give written notice of the sale in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure, as amended, or that rule's successor to each person who was a defendant to the judgment or that person's attorney.
(d) An officer's failure to send the written notice of sale or a defendant's failure to receive that notice is insufficient by itself to invalidate:
(1) the sale of the property; or
(2) the title conveyed by that sale.
(e) A notice of sale under Subsection (c) must substantially comply with this subsection. The notice must include:
(1) a statement of the authority under which the sale is to be made;
(2) the date, time, and location of the sale; and
(3) a brief description of the property to be sold.
(f) A notice of sale is not required to include field notes describing the property. A description of the property is sufficient if the notice:
(1) states the number of acres and identifies the original survey;
(2) as to property located in a platted subdivision or addition, regardless of

whether the subdivision or addition is recorded, states the name by which the land is generally known with reference to that subdivision or addition; or
(3) by reference adopts the description of the property contained in the judgment.
(g) For publishing a notice of sale, a newspaper may charge a rate that does not exceed the greater of:
(1) two cents per word; or
(2) an amount equal to the published word or line rate of that newspaper for the same class of advertising.
(h) If there is not a newspaper published in the county of the sale, or a newspaper that will publish the notice of sale for the rate authorized by Subsection (g), the officer shall post the notice in writing in three public places in the county not later than the 20th day before the date of the sale. One of the notices must be posted at the door of the county courthouse.
(i) The owner of real property subject to sale may file with the officer charged with the sale a written request that the property be divided and that only as many portions be sold as necessary to pay the amount due against the property, as calculated under Subsection (b). In the request the owner shall describe the desired portions and shall specify the order in which the portions should be sold. The owner may not specify more than four portions or a portion that divides a building or another contiguous improvement. That request must be delivered to the officer not later than the seventh day before the date of the sale.
(j) If a bid sufficient to pay the lesser or the amount calculated under Subsection (b) or the adjudged value is not received, the taxing unit that requested the order of sale may terminate the sale. If the taxing unit does not terminate the sale, the officer making the sale shall bid the property off to the taxing unit that requested the order of sale, unless otherwise agreed by each other taxing unit that is a party to the judgment, for the aggregate amount of the judgment against the property or for the market value of the property as specified in the judgment, whichever is less. The duty of the officer conducting the sale to bid off the property to a taxing unit under this subsection is self-executing. The actual attendance of a representative of the taxing unit at the sale is not a prerequisite to that duty.
(k) The taxing unit to which the property is bid off takes title to the property for the use and benefit of itself and all other taxing units that established tax liens in the suit. The taxing unit's title includes all the interest owned by the defendant, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption. Payments in satisfaction of the judgment and any costs or expenses of the sale may not be required of the purchasing taxing unit until the property is redeemed or resold by the purchasing taxing unit.
(l) Notwithstanding that property is bid off to a taxing unit under this section, a taxing unit that established a tax lien in the suit may continue to enforce collection on any amount for which a former owner of the property is liable to the taxing unit, including any post-judgment taxes, penalties, and interest, in any other manner provided by law.
(m) The officer making the sale shall prepare a deed to the purchaser of real property at the sale, to any other person whom the purchaser may specify, or to the taxing unit to which the property was bid off. The taxing unit that requested the order of sale may

elect to prepare a deed for execution by the officer, if the taxing unit prepares the deed, the officer shall execute that deed. An officer who executes a deed prepared by the taxing unit is not responsible or liable for any inconsistency, error, or other defect in the form of the deed. As soon as practicable after a deed is executed by the officer, the officer shall either file the deed for recording with the county clerk or deliver the executed deed to the taxing unit that requested the order of sale, which shall file the deed for recording with the county clerk. The county clerk shall file and record each deed filed under this subsection and after recording shall return the deed to the grantee.

(n) The deed vests good and perfect title in the purchaser or the purchaser's assigns to the interest owned by the defendant in the property subject to the foreclosure, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption, the terms of a recorded restrictive covenant running with the land that was recorded before January 1 of the year in which the tax lien on the property arose, a recorded lien that arose under that restrictive covenant that was not extinguished in the judgment foreclosing the tax lien, and each valid easement of record as of the date of the sale that was recorded before January 1 of the year the tax lien arose. The deed may be impeached only for fraud.

(*o*) If a bid sufficient to pay the amount specified by Subsection (p) is not received, the officer making the sale, with the consent of the collector who applied for the tax warrant, may offer property seized under Subchapter E, Chapter 33,[1] to a person described by Section 11.181 or 11.20 for less than that amount. If the property is offered to a person described by Section 11.181 or 11.20, the officer making the sale shall reopen the bidding at the amount of that person's bid and bid off the property to the highest bidder. Consent to the sale by the taxing units entitled to receive proceeds of the sale is not required. The acceptance of a bid by the officer under this subsection is conclusive and binding on the question of its sufficiency. An action to set aside the sale on the grounds that a bid is insufficient may not be sustained, except that a taxing unit that participates in distribution of proceeds of the sale may file an action before the first anniversary of the date of the sale to set aside the sale on the grounds of fraud or collusion between the officer making the sale and the purchaser.

(p) Except as provided by Subsection (*o*), property seize under Subchapter E, Chapter 33, may not be sold for an amount that is less than the lesser of the market value of the property as specified in the warrant or the total amount of taxes, penalties, interest, costs, and other claims for which the warrant was issued. If a sufficient bid is not received by the officer making the sale, the officer shall bid off the property to a taxing unit in the manner specified by Subsection (j) and subject to the other provisions of that subsection. A taxing unit that takes title to property under this subsection takes title for the use and benefit of that taxing unit and all other taxing units that established tax liens in the suit or that, on the date of the seizure, were owed delinquent taxes on the property.

(q) A sale of property under this section to a purchaser other than a taxing unit:

(1) extinguishes each lien securing payment of the delinquent taxes, penalties, and interest against that property and included in the judgment; and

(2) does not affect the personal liability of any person for those taxes, penalties, and interest included in the judgment that are not satisfied from the proceeds of the sale

(r) Except as provided by this subsection, a sale of real property under this section

must take place at the county courthouse in the county in which the land is located. The commissioners court of the county may designate an area in the county courthouse or another location in the county where sales under this section must take place and shall record any designated area or other location in the real property records of the county. If the commissioners court designates an area in the courthouse or another location in the county for sales, a sale must occur in that area or at that location. If the commissioners court does not designate an area in the courthouse or another location in the county for sales, a sale must occur in the same area in the courthouse that is designated by the commissioners court for the sale of real property under Section 51.002, Property Code.
(s) To the extent of a conflict between this section and a provision of the Texas Rules of Civil Procedure that relates to an execution, this section controls.
34.015 - Persons Eligible to Purchase Real Property
(a) In this section, "person" does not include a taxing unit or an individual acting on behalf of a taxing unit.
(b) An officer conducting a sale of real property under Section 34.01 may not execute a deed in the name of or deliver a deed to any person other than the person who was the successful bidder. The officer may not execute or deliver a deed to the purchaser of the property unless the purchaser exhibits to the officer an unexpired written statement issued under this section to the person by the county assessor-collector of the county in which the sale is conducted showing that:
(1) there are no delinquent taxes owed by the person to that county; and
(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality.
(c) On the written request of any person, a county assessor-collector shall issue a written statement stating whether there are any delinquent taxes owed by the person to that county or to a school district or municipality having territory in that county. A request for the issuance of a statement by the county assessor-collector under this subsection must:
(1) sufficiently identify any property subject to taxation by the county or by a school district or municipality having territory in the county, regardless of whether the property is located in the county, that the person owns or formerly owned so that the county assessor-collector and the collector for each school district or municipality having territory in the county may determine whether the property is included on a current or a cumulative delinquent tax roll for the county, the school district, or the municipality under Section 33.03;
(2) specify the address to which the county assessor-collector should send the statement;
(3) include any additional information reasonably required by the county assessor-collector; and
(4) be sworn to and signed by the person requesting the statement.
(d) On receipt of a request under Subsection (c), the county assessor-collector shall send to the collector for each school district and municipality having territory in the county, other than a school district or municipality for which the county assessor-collector, a request for information as to whether there are any delinquent taxes owed by the person

to that school district or municipality. The county assessor-collector shall specify the date by which the collector must respond to the request.

(e) If the county assessor-collector determines that there are delinquent taxes owed to the county, the county assessor-collector shall include in the statement issued under Subsection (c) the amount of delinquent taxes owed by the person to that county. If the county assessor-collector is the collector for a school district or municipality having territory in the county and the county assessor-collector determines that there are delinquent ad valorem taxes owed by the person to the school district or municipality, the assessor-collector shall include in the statement issued under Subsection (c) that amount of delinquent taxes owed by the person to that school district or municipality.

(f) If the county assessor-collector receives a response from the collector for a school district or municipality having territory in the county indicating that there are delinquent taxes owed to that school district or municipality on the person's current or former property for which the person is personally liable, the county assessor-collector shall include in the statement issued under Subsection (c):

(1) the amount of delinquent taxes owed by the person to that school district or municipality and

(2) the name and address of the collector for that school district or municipality.

(g) If the county assessor-collector determines that there are no delinquent taxes owed by the person to the county or to a school district or municipality for which the county assessor-collector is the collector, the county assessor-collector shall indicate in the statement issued under Subsection (c) that there are no delinquent ad valorem taxes owed by the person to the county or to the school district or municipality.

(h) If the county assessor-collector receives a response from the collector for any school district or municipality having territory in that county indicating that there no delinquent ad valorem taxes owed by the person to that school district or municipality, the county assessor-collector shall indicate in the statement under Subsection (c) that there are no delinquent ad valorem taxes owed by the person to that school district or municipality.

(i) If the county assessor-collector does not receive a response from the collector for any school district or municipality to whom the county assessor-collector sent a request under Subsection (d) as to whether there are delinquent taxes on the person's current or former property owed by the person to that school district or municipality, the county assessor-collector shall indicate in the statement issued under Subsection (c) that there are no reported delinquent taxes owed by the person to that school district or municipality.

(j) To cover the costs associated with the issuance of statements under Subsection (c), a county assessor-collector may charge the person requesting a statement a fee not to exceed $10 for each statement requested.

(k) A statement under Subsection (c) must be issued in the name of the requestor, bear the requestor's name, include the dates of issuance and expiration, and be eligible for recording under Section 12.001(b), Property Code. A statement expires on the 90th day after the date of issuance.

(k-1) If within six months of the date of a sale of real property under Section 34.01, the successful bidder does not exhibit to the officer who conducted the sale an unexpired statement that complies with Subsection (k), the officer who conducted the sale shall provide a copy of the officer's return to the county assessor-collector for each county in

which the real property is located. On receipt of the officer's return, the county assessor120
collector shall file the copy with the county clerk of the county in which the county assessor-collector serves. The county clerk shall record the return in records kept for that purpose and shall index and cross-index the return in the name of the successful bidder at the auction and each former owner of the property. The chief appraiser of each appraisal district that appraises the real property for taxation may list the successful bidder in the appraisal records of the district as the owner of the property.

(*l*) The deed executed by the officer conducting the sale must name the successful bidder as the grantee and recite that the successful bidder exhibited to that officer an unexpired written statement issued to the person in the manner prescribed by this section, showing that the county assessor-collector of the county in which the sale was conducted determined that:

(1) there are no delinquent ad valorem taxes owed by the person to that county; and

(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(m) If a deed contains the recital required by Subsection (*l*), it is conclusively presumed that this section was complied with.

(n) A person who knowingly violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

(*o*) To the extent of a conflict between this section and any other law, this section controls.

(p) This section applies only to a sale of real property under Section 34.01 that is conducted in:

(1) a county with a population of 250,000 or more; or

(2) a county with a population of less than 250,000 in which the commissioners court by order has adopted the provisions of this section.

34.02 - Distribution of Proceeds

(a) The proceeds of a tax sale under Section 33.94 or 34.01 shall be applied in the order prescribed by Subsection (b). The amount included under each subdivision of Subsection (b)
must be fully paid before any of the proceeds may be applied to the amount included under a
subsequent subdivision.

(b) The proceeds shall be applied to:

(1) the costs of advertising the tax sale;

(2) any fees ordered by the judgment to be paid to an appointed attorney ad litem;

(3) the original court costs payable to the clerk of the court;

(4) the fees and commissions payable to the officer conducting the sale;

(5) the expenses incurred by a taxing unit in determining necessary parties and in procuring necessary legal descriptions of the property if those expenses were awarded to the taxing unit by the judgment under section 33.48(a)(4);

(6) the taxes, penalties, interest, and attorney's fees that are due under the judgment, and

(7) any other amount awarded to a taxing unit under the judgment.
(c) If the proceeds are not sufficient to pay the total amount included under any subdivision of Subsection (b), each participant in the amount included under that subdivision
is entitled to a share of the proceeds in an amount equal to the proportion its entitlement bears to the total amount included under that subdivision.
(d) The officer conducting a sale under Section 33.94 or 34.01 shall pay any excess proceeds after payment of all amounts due all participants in the sale as specified by Subsection (b) to the clerk of the court issuing the warrant or order of sale.
(e) In this section, "taxes" includes a charge, fee, or expense that is expressly authorized by Section 32.06 or 32.065.
34.05 - Resale by Taxing Unit
(a) If property is sold to a taxing unit that is a party to the judgment, the taxing unit may sell the property at any time by public or private sale. In selling the property, the taxing unit may, but is not required to, use the procedures provided by Section 263.001, Local Government Code, or Section 272.001, Local Government Code. The sale is subject to any right of redemption of the former owner. The redemption period begins on the date the deed to the taxing unit is filed for record.
(b) Property sold pursuant to Subsections (c) and (d) of this section may be sold for any amount. This subsection does not authorize a sale of property in violation Section 52, Article III, Texas Constitution.
(c) The taxing unit purchasing the property by resolution of it governing body may request the sheriff or constable to sell the property at a public sale. If the purchasing taxing unit has not sold the property within six months after the date on which the owner's right of redemption terminates, any taxing unit that is entitled to receive proceeds of the sale by resolution of its governing body may request the sheriff or a constable in writing to sell the property at a public sale. On receipt of a request made under this subsection, the sheriff or constable shall sell the property as provided by subsection (d), unless the property is sold under Subsection (h) or (i) before the date set for the public sale.
(d) Except as provided by this subsection, all public sales requested as provided by Subsection (c) shall be conducted in the manner prescribed by the Texas Rules of Civil Procedure for the sale of property under execution. The notice of the sale must contain a description of the property to be sold, the number and style of the suit under which the property was sold at the tax foreclosure sale, and the date of the tax foreclosure sale. The description of the property in the notice is sufficient if it is stated in the manner provided by Section 34.01(f). If the commissioners court of a county by order specifies the date or time at which or location in the county where a public sale requested under Subsection (c) shall be conducted, the sale shall be conducted on the date and at the time and location specified in the order. The acceptance of a bid by the officer conducting the sale is conclusive and binding on the question of its sufficiency. An action to set aside the sale on the grounds that the bid is insufficient may not be sustained in court, except that a taxing unit that participates in distribution of proceeds of the sale may file an action before the first anniversary of the date of the sale to set aside the sale on the grounds of fraud or collusion between the officer making the sale and the purchaser. On conclusion of the sale, the officer making the sales shall prepare a deed to the purchaser. The taxing unit that requested the sale may elect to prepare a deed for execution by the officer. If the taxing

unit prepares the deed, the officer shall execute that deed. An officer who executes a deed prepared by the taxing unit is not responsible or liable for any inconsistency, error, or other defect in the form of the deed. As soon as practicable after a deed is executed by the officer, the officer shall either file the deed for recording with the county clerk or deliver the executed deed to the taxing unit that requested the sale, which shall file the deed for recording with the county clerk. The county clerk shall file and record each deed under this subsection and after recording shall return the deed to the grantee.

(e) The presiding officer of a taxing unit selling real property under Subsection (h) or (i), under Section 34.051, or under Section 253.010, Local Government Code, or the sheriff or constable selling real property under Subsection (c) and (d) shall execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property. The conveyance shall be made subject to any remaining right of redemption at the time of the sale.

(f) - - - -

(g) - - - -

(h) In lieu of a sale pursuant to the Subsection (c) and (d) of this section, the taxing unit that purchased the property may sell the property at a private sale. Consent of each taxing unit entitled to receive proceeds of the sale under the judgment is not required. Property sold under this subsection may not be sold for an amount that is less than the lesser of:

(1) the market value specified in the judgment of foreclosure; or

(2) the total amount of the judgments against the property.

(i) In lieu of a sale pursuant to Subsection (c) and (d) of this section, the taxing unit that purchased the property may sell the property at a private sale for an amount less than required under Subsection (h) of this section with the consent of each taxing unit entitled to receive proceeds of the sale under the judgment. This subsection does not authorize a sale of property in violation of Section 52, Article III, Texas Constitution.

(j) In lieu of a sale pursuant to Subsections (c) and (d), the taxing unit that purchased the property may sell the property at a private sale for an amount equal to or greater than its market value, as shown by the most recent certified appraisal roll, if:

(1) the sum of the amount of the judgment plus post-judgment taxes, penalties, and interest owing against the property exceeds the market vales; and

(2) each taxing unit entitled to receive proceeds of the sale consents to the sale for that amount.

(k) A sale under Subsection (j) discharges and extinguishes all liens foreclosed by the judgment and, with the exception of the prorated tax for current year that is assessed under Section 26.10, the liens for post-judgment taxes that accrued from the date of judgment until the date the taxing unit purchased the property. The presiding officer of a taxing unit selling real property under Subsection (j) shall execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property. The conveyance is subject to any remaining right of redemption at the time of the sale and to the purchaser's obligation to pay the prorated taxes for the current year as provide by Section 26.10. The deed must recite that the liens foreclosed by the judgment and the post-judgment tax liens are discharged and extinguished by virtue of the conveyance.

(l) A taxing unit that does not consent to a sale under Subsection (j) is liable to the taxing unit that purchased the property for a pro rata share of the costs incurred by the purchasing unit in maintaining the property, including the costs of preventing the property from becoming a public nuisance, a danger to the public, or a threat to the public health. The nonconsenting unit's share of the costs described by this subsection is calculated from the date the unit fails to consent to the sale and is equal to the percentage of the proceeds from a sale of the property to which the nonconsenting unit would be entitled multiplied by the costs incurred by the purchasing unit to maintain the property.

34.06 - Distribution of Proceeds of Resale

(a) The proceeds of a resale of property purchased by a taxing unit at a tax foreclosure sale shall be paid to the purchasing taxing unit.

(b) The proceeds of the resale shall be distributed as required by Subsections (c)-(e).

(c) The purchasing taxing unit shall first retain an amount from the proceeds to reimburse the unit for reasonable costs, as defined by Section 34.21, incurred by the unit for:

(1) maintaining, preserving, and safekeeping the property;

(2) marketing the property for resale; and

(3) costs described by Subsection (f).

(d)- - - -

(e)- - - -

(f)- - - -

34.21 - Right of Redemption

(a) The owner of real property sold at a tax sale to a purchaser other than a taxing unit that was used as the residence homestead of the owner or that was land designated for agricultural use when the suit or the application for the warrant was filed, or the owner of a mineral interest sold at a tax sale to ta purchaser other than a taxing unit, may redeem the property on or before the second anniversary of the date on which the purchaser's deed is filed for record by paying the purchaser the amount the purchaser bid for the property, the amount of the deed recording fee, and the amount paid by the purchaser as taxes, penalties, interest, and costs on the property, plus a redemption premium of 25 percent of the aggregate total if the property is redeemed during the first year of the redemption period or 50 percent of the aggregate total if the property is redeemed during the second year of the redemption period.

(b) If property that was used as the owner's residence homestead or was land designated for agricultural used when the suit or the application for the warrant was filed, or that is was mineral interest, is bid off to a taxing unit under Section 34.01(j) or (p) and has not been resold by the taxing unit, the owner having a right of redemption my redeem the property on or before the second anniversary of the date on which the deed of the taxing unit is filed for record by paying the taxing unit:

(1) the lesser of the amount of the judgment against the property or the market value of the property as specified in the judgment, plus the amount of the fee for filing the taxing unit's deed and the amount spent by the taxing unit and costs on the property, if the property was judicially foreclosed and bid off to that taxing unit under Section 34.01(j); or

(2) the lesser of the amount of taxes, penalties, interest, and costs for which the warrant was issued or the market value of the property as specified in the warrant, plus the amount of the fee for filing the taxing unit's deed and the amount

spent by the taxing unit as costs on the property, if the property was seized under Subchapter E, Chapter 33, 1 and bid off to the taxing nit under Section 34.01(p).
(c) If real property that was used as the owner's residence homestead or was land designated for agricultural use when the suit or the application for the warrant was filed, or that is a mineral interest, has been resold by the taxing unit under Section 34.05, the owner of the property having a right of redemption my redeem the property on or before the second anniversary of the date on which then taxing unit files for record the deed from the sheriff or constable by paying the person who purchased the property from the taxing unit the amount the purchaser paid for the property, the amount of the fee for filing the purchaser's deed for record, the amount paid by the purchaser as taxes, penalties, interest, and costs on the property, plus a redemption premium of 25 percent of the aggregate total if the property is redeemed during the first year of the redemption period or 50 percent of the aggregate total if the property is redeemed during the second year of the redemption period.
(d) If the amount paid by the owner of the property under Subsection (c) is less that the amount of the judgment under which the property was sold, the owner shall pay the taxing unit to which the property was bid off under Section 34.01 and amount equal to the difference between the amount paid under Subsection (c) and the amount equal to the judgment. The taxing unit shall distribute the amount receipt for a payment received under the subsection and shall distribute the amount received to each taxing unit the participated in the judgment and sale in an amount proportional to the unit's share of the total amount of the aggregate judgments of the participating taxing units. The owner of the property shall deliver the receipt received from the taxing unit to the person from whom the property is redeemed.
(e) The owner of real property sold at a tax sale other than property that was used as the residence homestead of the owner or that was land designated for agricultural used when the suit or the application for the warrant was filed, or that is a mineral interest, may redeem the property in the same manner and by paying the same amounts as prescribed by Subsections (a), (b), (c), or (d), as applicable, except that:
(1) the owner's right of redemption may be exercised not later than the 180th day following the date on which the purchaser's or taxing unit's deed is filed for record; and
(2) the redemption premium payable by the owner to a purchaser other than a taxing unit may not exceed 25 percent.
(f) The owner of real property sold at a tax sale may redeem the real property by paying the required amount as prescribed by this section to the assessor-collector for the county in which the property was sold, if the owner of the real property makes an affidavit stating:
(1) that the period in which the owner's right of redemption must be exercised has not expired; and
(2) that the owner has made diligent search in the county in which the property is located for the purchaser at the tax sale or for the purchaser at resale, and has failed to find the purchaser, that the purchaser is not a resident of the county in which the property is located, that the owner and the purchases cannot agree on the amount of redemption money due, or that the purchaser refuses to give the owner a quitclaim deed to the property.
(f-1) An assessor-collector who receives an affidavit and payment under Subsection (f) shall accept that the assertions set out in the affidavit are true and correct. The assessor collector

receiving the payment shall give the owner a signed receipt witnessed by two persons. The receipt, when recorded, is notice to all persons that the property described has been redeemed. The assessor-collector shall on demand pay the money received by the assessor collector
to the purchaser. An assessor-collector is not liable to any person for performing the assessor-collector's duties under this subsection in reliance on the assertions contained in an affidavit.
(g) In this section:
(1) "Land designated for agricultural use" means land for which an application for appraisal under Subchapter C or D, Chapter 23, 2 has been finally approved.
(2) "Costs" includes:
(A) the amount reasonably spent by the purchaser for maintaining, preserving, and safekeeping the property, including the cost of:
(i) property insurance;
(ii) repairs or improvements required by a local ordinance or building code or by a lease of the property in effect on the date of the sale;
(iii) discharging a lien imposed by a municipality to secure expenses incurred by the municipality in remedying a held or safety hazard on the property;
(iv) dues or assessments for maintenance paid to a property owners' association under a recorded restrictive covenant to which the property is subject; and
(v) impact or standby fees imposed under the Local Government Code or Water Code and paid to a political subdivision; and
(B) if the purchaser is a taxing unit to which the property is bid off under Section 34.01, personnel and overhead costs reasonably incurred by the purchaser in connection with maintaining, preserving, safekeeping, managing, and reselling the property.
(3) "Purchaser" included a taxing unit to which property is bid off under Section 34.01.
(4) "Residence homestead" has the meaning assigned by Section 11.13.
(h) The right of redemption does not grant or reserve in the former owner of the real property the right to the use or possession of the property, or to receive rents, income, or other benefits from the property while the right of redemption exists.
(i) The owner of property who is entitled to redeem the property under this section may request that the purchaser of the property, or the taxing unit to which the property was bid off, provide that owner a written itemization of all amounts spent by the purchaser or taxing unit in costs on the property. The owner must make the request in writing and send the request to the purchaser at the address shown for the purchaser in the purchaser's deed for the property, or to the business address of the collector for the taxing unit, as applicable. The purchaser or the collector shall itemize all amounts spent on the property in costs and deliver the itemization in writing to the owner not later than the 10th day after the date the written request is received. Delivery of the itemization to the owner may be made by depositing the document

in the United States mail, postage prepaid, addressed to the owner at the address provided in the owner's written request. Only those amounts included in the itemization provided to the owner may be allowed as costs for purposes of redemption.
(j) A quitclaim deed to an owner redeeming property under this section is not notice of an unrecorded instrument. The grantee of a quitclaim deed and a successor or assign of the grantee may be a bona fide purchaser in good faith for value under recording laws.
(k) The inclusion of dies and assessments for maintenance paid to a property owner's association within the definition of "costs' under Subsection (g) may not be construed as:
(1) a waiver of any immunity to which a taxing unit may by entitles from a suit or from liability for those dues or assessments; or
(2) authority for a taxing unit to make an expenditure of public funds in violation of Section 50, 51, or 52(a), Article III, or Section 3, Article XI, Texas Constitution.
34.22 - Evidence of Title to Redeem Real Property
(a) A person asserting ownership of real property sold for taxes in entitled to redeem the property if he had title to the property or he was in possession of the property in person or by tenant either at the time suit to foreclose the tax lien on the property was instituted or a the time the property was sold. A defect in the chain of title to the property does not defeat an offer to redeem.
(b) A person who establishes title to real property that is superior to the title of one who has previously redeemed the property is entitled to redeem the property during the redemption period by paying the amounts provided by law to the person who previously redeemed the property.

CHAPTER 13
TEXAS BUSINESS CORPORATION ACT

ART. 2.11 - Service of Process on Corporation

A. The president and all vice presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.
B. Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with the Deputy Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is service on the Secretary of State, he shall immediately cause on of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.
D. Service of process, notice, or demand required or permitted by law to be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection of a delinquent ad valorem tax may be served on a corporation whose corporate privileges are forfeited under Section 171.251, Tax Code, or is involuntarily dissolved under Article 7.01 of this Act by delivering the process, notice, or demand to any officer or director of the corporation, as listed in the most recent records of the secretary of state. If the officers or directors of the corporation are unknown or cannot be found, service on the corporation may be made in the same manner as service in made on unknown shareholders under law. Notwithstanding any disability or reinstatement of a corporation, service of process under this section is sufficient for a judgment against the corporation or a judgment in rem against any property to which the corporation holds title.

NEW LAW

Writ/Order of Retrieval (Tex. Property Code 24A.002
Issued by Justice of the Peace

Requirements
1. Applicant certifies the applicant is unable to enter the residence because of current occupant.
2. Certify the applicant is not
   (A) Subject to an activity protective order or a magistrate's order for protection
   (B) Otherwise prohibited by law from entering the residence
3. Allege the applicant or minor dependent requires personal items locate in the residence.
   (A) Medical records
   (B) Medicine and medical supplies
   (C) Clothing
   (D) Child-care items
   (E) Legal or financial documents
   (F) Check or bank or credit cards in the name of the applicant
   (G) Employment records
   (H) Personal identification documents
4. Describe with specificity the items that the applicant intends to retrieve
5. Allege the applicant or dependents will suffer personal harm if the items are not retrieved.
6. Include a lease or other documentary evidence that shows the applicant is currently or was formerly authorized to occupy the residence.

Before the Justice of the Peace may issue the applicant must execute a bond payable to the occupant in amount set by the Justice of the Peace.

Peace officer Duty—As defined as a Sheriff or Constable in the Code of Criminal Procedure.

(a) Shall accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application.
(b) If the current occupant is present the peace officer shall provide the occupant a copy of the court order
(c) Before removing the property the applicant must submit all property to the peace officer to be inventoried. The peace officer will give a copy to the applicant, the occupant (if present). If not present the officer will leave a copy in a conspicuous place. The officer shall file the original inventory with the return for the court order.
(d) The peace officer who provides assistance in good faith and with reasonable diligence is not
    (1) Civilly liable for an act or omission of the officer that arises in connection with providing the assistance or
    (2) Civilly or criminally liable for the wrongful appropriation of any personal property by the person the officer is assisting.

The landlord is not civilly or criminally liable for an act or omission that arises in connection with permitting or facilitating the entry.
The officer shall make return to the court detailing the execution of the writ or order with the inventory attached.

Offense
A person commits an offense if the person interferes with a person or peace officer entering a residence and retrieving personal property under the authority of a court order issued under Section 24A.002. *Offense is a Class B Misdemeanor (Tex. Pro. Code 24A.005)*

Not later than the 10th day after execution of the writ the occupant may request a hearing to alleging that the applicant has appropriated property belonging to the occupant or the occupant's dependent's. The court shall promptly hold a hearing and rule on the disposition of the disputed property.

Writ of Assistance for repossession of an aircraft (Tex. Pro. Code Ch. 30)

Issued By – Justice of the Peace
Duration – 30 days from the date of issue. Maybe renewed
Executed by – Any Peace Officer (not limited to Sheriff or Constable)
Officer Duty -- The peace officer will assist and protect a repossession agent in gaining possession of the aircraft while the agent (1) secures the aircraft on site or (2) prepares the aircraft for removal from the site by flight.
Complete a return detailing when, where and how the writ was executed.

Exempt Property – Increase personal property exemption (Tex. Pro. Code 42.002)

The following personal property is exempt for a family ($100,000.00) or a single adult ($50,000.00).

Eviction Writ of Possession -- (Tex. Pro. Code 24.0061 (d-1)

(d-1) has been added to the eviction with of possession.

(d-1) A municipality may provide, without charge to the landlord or the owner of personal property removed from a rental unit under Subsection (d), a portable, closed container into which the removed personal property shall be placed by the officer execution the writ or by the authorized person. The municipality may remove the container from the location near the rental unit and dispose of the contents by any lawful means if the ower of the removed personal property does not recover the property from the container within a reasonable time after the time the property is placed in the container.

Real Property Sales – Tax Property Code Ch.33 & 34. Civil Practices and Remedies Code 34.0445

Bidder Registration Tax Code 33.011□(a) Applies only to sale of real property in a county where commissioners

court by order has adopted the provision of this section

. (b) Eligible bidder must register with the county tax collector before the sale. □Tax collector may adopt rules to govern registration□(1) name and address of person□(2) Proof of identification□(3) Written proof of authority to bid on behalf of another person□(4) Any additional information reasonably required by the assessor-col- □lector□(5) provided the certifying document that there are no delinquent ad □valorem taxes owed by the person registering. □

. (c) Assessor-collector shall issue a written registration statement to a person □who has registered as a bidder. A person who has not registered may not bid on the property a the sale. □

Person eligible to purchase real property CPRC-34.0445□(a) Officer may not deliver deed unless purchase exhibits to the officer

. (1) An unexpired statement from the tax collector showing the person owes not taxes. □(A) No taxes owed in the county □(B) No taxes owed to school district or other taxing unit □

. (2) Written bidder registration □

. (b) may not bid on or purchase in the name of another □

. (c) Deed must name the successful bidder. □

Property Tax Code 34.01 (a-1)

The commissioners court of a county by official action may authorize the officer charged with selling property under this section to conduct a public auction using onlne bidding and sale. The commissioners court may adopt rules governing online auctions authorized under this subsection. Rules adopted by the commissioners court under this subsection take effect on the 90th day after the date the rules are published in the real property records of the county.