

**PROCEDURES AND ETHICAL
CONSIDERATIONS IN
COLLECTING JUDGMENTS:
So You've Got a Judgment -Now What?**



**March 20, 2007
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PROCEDURES AND ETHICAL CONSIDERATIONS IN COLLECTING JUDGMENTS: So You've Got a Judgment -Now What?

I. Post-Judgment Discovery

A. Rule 621a, Tex. R. Civ. P.

Rule 621a. Discovery and Enforcement of Judgment

At any time after rendition of judgment, and so long as said judgment has not been suspended by a supersedeas bond or by order of a proper court and has not become dormant as provided by Article 3773, V.A.T.S., the successful party may, for the purpose of obtaining information to aid in the enforcement of such judgment, initiate and maintain in the trial court in the same suit in which said judgment was rendered any discovery proceeding authorized by these rules for pre-trial matters. Also, at any time after rendition of judgment, either party may, for the purpose of obtaining information relevant to motions allowed by Texas Rules of Appellate Procedure 47 and 49 initiate and maintain in the trial court in the same suit in which said judgment was rendered any discovery proceeding authorized by these rules for pre-trial matters. The rules governing and related to such pre-trial discovery proceedings shall apply in like manner to discovery proceedings after judgment. The rights herein granted to the parties shall inure to their successors or assignees, in whole or in part. Judicial supervision of such discovery proceedings after judgment shall be the same as that provided by law or these rules for pre-trial discovery and proceedings insofar as applicable.

B. Contempt and Bodily Attachment

C. Online research - free or fee

accurint.com
hcad.org
knowx.com
howardnations.com
craigball.com

D. Bank accounts

arbi.com

II. Abstracts of Judgment

A. Chapter 52, Tex. Property Code

B. Contents of Abstract

§ 52.003. Contents of Abstract

- (a) An abstract of a judgment must show:
 - (1) the names of the plaintiff and defendant;
 - (2) the birthdate and driver's license number of the defendant, if available to the clerk or justice;
 - (3) the number of the suit in which the judgment was rendered;
 - (4) the defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;
 - (5) the date on which the judgment was rendered;
 - (6) the amount for which the judgment was rendered and the balance due;
 - (7) the amount of the balance due, if any, for child support arrearage; and
 - (8) the rate of interest specified in the judgment.
- (b) An abstract of a judgment may show a mailing address for each plaintiff or judgment creditor.

C. Duration of A/J Lien

§ 52.006. Duration of Lien

A judgment lien continues for 10 years following the date of recording and indexing the abstract, except that if the judgment becomes dormant during that period the lien ceases to exist.

D. Dormancy of Judgment

§ 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.

E. Revival of Judgment

§ 31.006. Revival of Judgment

A dormant judgment may be revived by scire facias or by an action of debt brought not later than the second anniversary of the date that the judgment becomes dormant.

III. Writs of Execution

- A. Chapter 34, Tex. Civ. Prac. & Rem. Code
- B. Rules 621- 656, Tex. R. Civ. P.
- C. Corporate vs. Individual Judgment-Debtors - Chapters 41 and 42, Tex. Property Code
- D. Property Subject to Security Interest or Mortgage

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.

IV. Post-Judgment Garnishment

- A. Chapter 63, Tex. Civ. Prac. & Rem. Code
- B. Rules 657 - 679, Tex. R. Civ. P.
- C. Service and Notice - Section 59.008, Tex. Finance Code; Rule 663a, Tex. R. Civ. P.
- D. Avoiding Wrongful Garnishment

Section 63.001 Grounds:

A writ of garnishment is available if . . .

- (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.

V. Turnover

- A. Section 31.002, Tex. Civ. Prac. & Rem. Code

§ 31.002. Collection of Judgment Through Court Proceeding

- (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 creditor to the extent required to satisfy the judgment.
 - (c) The court may enforce the order by contempt proceedings or by other appropriate means in the event of refusal or disobedience.
 - (d) The judgment creditor may move for the court's assistance under this section in the same proceeding in which the judgment is rendered or in an independent proceeding.
 - (e) The judgment creditor is entitled to recover reasonable costs, including attorney's fees.
- B. Turnover of non-exempt property
 - C. Receivership
 - D. Creative use of "other means"

VI. Ethical Considerations

A. Rule 4.01, Texas Disciplinary Rules of Professional Conduct

Rule 4.01 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
 - (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.
- ### B. Rule 4.04, Texas Disciplinary Rules of Professional Conduct

Rule 4.04 Respect for Rights of Third Persons

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer shall not present, participate in presenting, or threaten to present:
 - (1) criminal or disciplinary charges solely to gain an advantage in a civil matter; or
 - (2) civil, criminal or disciplinary charges against a complainant, a witness, or a potential witness in a bar disciplinary proceeding solely to prevent participation by the complainant, witness or potential witness therein.

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