

## SECTION 6. EXECUTION<sup>20</sup>

### Rule EXE 1 (656). Enforcement of Judgment

- (a) *Execution or Other Appropriate Process.* The judgments of the district, county, and justice courts shall be enforced by execution or other appropriate process.
- (b) *Judgment Creditor and Judgment Debtor Defined.* For purposes of **Rules EXE 1- 15 (621-670)**, “judgment creditor” is defined as the party for whom judgment was rendered or the current owner of the judgment, and “judgment debtor” is defined as the party against whom judgment was rendered.<sup>21</sup>
- (c) *Successor Rights.* The rights of the parties regarding the judgment shall inure to their successors or assigns.

### Rule EXE 2 (657). Post-Judgment Discovery<sup>22</sup>

- (a) *Aid in Enforcement of Judgment.* At any time after a judgment has been signed, a judgment creditor may aid the enforcement of judgment by conducting, in the same suit in which the judgment was rendered, any form of pretrial discovery<sup>23</sup> authorized by these rules, unless the judgment has been superseded or has become dormant as provided by section 34.001 of the Texas Civil Practice and Remedies Code.<sup>24</sup>
- (b) *For Appellate Motions.* At any time after a judgment has been signed, a party may conduct, in the same suit in which the judgment was rendered, any form of pretrial discovery authorized by these rules for the purpose of obtaining

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<sup>21</sup> The Execution Rule Subcommittee has proposed defining “judgment creditor” as “the party for whom judgment was rendered” and “judgment debtor” as “the party against whom judgment was rendered.” Additionally, in light of the prevalence of transfers of debts and judgments, the definition of “judgment creditor” specifically includes the current owner of the judgment. For consistency, the term “judgment creditor” has replaced “plaintiff,” and the term “judgment debtor” has replaced “defendant” and “defendant in execution” in all rules relating to executions.

<sup>22</sup> This draft rule is modeled after existing Rule 621a.

<sup>23</sup> The term “form of discovery” or merely “discovery” has replaced the term “discovery proceeding” in existing Rule 621a. The term “form of discovery” is defined in Rule 192.1 of the Texas Rules of Civil Procedure.

<sup>24</sup> The reference to Section 34.001 of the Texas Civil Practice and Remedies Code replaces the outdated reference to “Article 3773, V.A.T.S.” in existing Rule 621a.

information relevant to motions allowed by Texas Rule of Appellate Procedure 24.<sup>25</sup>

- (c) *Pretrial Discovery Rules Apply.* The rules and law governing pretrial discovery and judicial supervision thereof apply to post-judgment discovery and proceedings, insofar as applicable; provided, however, that post-judgment depositions of the parties may be scheduled by notice, without requiring service of a subpoena.
- (d) *Service.* If no notice of appeal has been filed in county or district court, or if the case is in a justice of the peace court no appeal bond or affidavit of inability has been filed, service of post-judgment discovery and motions shall be made upon both the judgment debtor and the judgment debtor's trial counsel pursuant to Rule 21a. If an appeal has been perfected from county or district court, service shall be made as provided in Texas Rule of Appellate Procedure 6.3.

### **Rule EXE 3 (658). Issuance of Writ<sup>26</sup>**

- (a) *Issuance of Writ.* Upon the request of a judgment creditor, or the judgment creditor's agent or attorney, a writ of execution to enforce the judgment and collect the costs shall be prepared only by the clerk or the justice of the peace that rendered the judgment. The clerk or justice of the peace must deliver the writ to:
  - (1) the sheriff or constable designated by the judgment creditor, or the judgment creditor's agent or attorney; or
  - (2) the judgment creditor, or the judgment creditor's agent or attorney, who must then deliver the writ to the sheriff or constable.<sup>27</sup>
- (b) *Multiple Writs.* Multiple writs may be prepared at the same time, or in succession, without requiring return of the prior writ or writs. Writs may be sent

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<sup>25</sup> The reference to Texas Rule of Appellate Procedure 24 replaces the outdated references to Texas Rules of Appellate Procedure "47 and 49" in existing Rule 621a of the Texas Rules of Civil Procedure. Subdivision (d) includes suggested language to address the issue of service of post-judgment discovery on counsel for the judgment debtor or appellate counsel for the appellant in the case of an inquiry under Texas Rule of Appellate Procedure 24.

<sup>26</sup> Rule **EXE 3 (658)** is based on existing Rule 622. The title has changed from "Execution" to "Issuance of Writs of Execution." Existing Rules 627 ("Time for Issuance") and 628 ("Execution Within Thirty Days") have been incorporated into Rule **EXE 3 (658)**. For consistency, the term "request" has replaced the term "application" that appeared in these rules relating to execution.

<sup>27</sup> The Execution Rule Subcommittee proposed adding a footnote here, reading: *See* TEX. CIV. PRAC. & REM. CODE § 34.001; *Williams v. Short*, 730 S.W.2d 98 (Tex. App.—Houston [14th Dist.] 1987, writ ref'd n.r.e.) (holding that "issuance" pursuant to the statute requires both the clerical preparation of the writ and actual delivery to an officer for enforcement).

to different counties for service by the sheriffs or constables. In the event multiple writs are issued, the judgment creditor, or the judgment creditor's agent or attorney, must inform the officers to whom the writs are delivered that multiple writs are outstanding.<sup>28</sup>

(c) *Time for Issuance from District and County Courts.*

- (1) *Enforcement of Judgment Not Suspended.* If enforcement of a judgment has not been suspended in accordance with Texas Rule of Appellate Procedure 24, the clerk shall not prepare a writ until after the expiration of thirty days from the time a final judgment is signed.
- (2) *If Motion for New Trial or Motion to Modify, Correct or Reform is Filed.* If a timely motion for new trial or motion to modify, correct, or reform the judgment is filed, the clerk shall not prepare a writ until after the expiration of thirty days from the time the order overruling the motion is signed or from the time the motion is overruled by operation of law.
- (3) *Execution within Thirty Days.* A writ of execution may be issued before the thirtieth day after a final judgment is signed upon filing of an affidavit by the judgment creditor, or the judgment creditor's agent or attorney, that the judgment debtor is about to remove the judgment debtor's personal property subject to execution out of the county, or is about to transfer or secrete the judgment debtor's property for the purpose of defrauding creditors.

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<sup>28</sup> When the judgment debtor has property in more than one county, it is useful for the judgment creditor to be able to obtain multiple writs of execution. Whether by interpretation of existing Rule 622's language referring to "the execution and subsequent executions" or practice, many clerks' offices will not issue multiple writs and will not issue a subsequent writ until the previous writ is returned. Other clerks will issue multiple writs on request.

In light of the changes to Chapter 34 of the Texas Civil Practice and Remedies Code — e.g., Section 34.071(1), which provides that the officer receiving a writ of execution does not have a duty to search for property belonging to the judgment debtor — it appears that the plaintiff will have the duty to search for and identify property of the judgment debtor. This appears to put the burden on the plaintiff of preventing an excessive levy. Therefore, the issuance of multiple writs and their delivery to multiple constables can be controlled by the plaintiff in such a way as to prevent excessive levy and at the same time give the plaintiff the opportunity to collect its judgment by seizure of properties in multiple counties simultaneously. Section 34.071(1) does not excuse the officers handling writs from claims of excessive levy. To further prevent an excessive levy, it would help to put officers on notice of the multiple writs.

A suggestion was made to have the clerk's office note on the writ that multiple writs are outstanding; however, this would not address the issue of successive writs, as the first writ issued would be issued when there was no request for the second writ in hand.

(d) *Time for Issuance from Justice Courts.*

- (1) *Enforcement of Judgment Not Suspended.* If a judgment has not been appealed to county court in accordance with the Texas Rules of Civil Procedure, the justice of the peace shall not prepare a writ until after the expiration of ten days from the time a final judgment is signed or five days from the time a final judgment is signed in a forcible detainer action.
- (2) *If Motion for New Trial or Motion to Modify, Correct or Reform is Filed.* If a timely motion for new trial or motion to modify, correct, or reform the judgment is filed, the justice of the peace shall not prepare a writ until after a request of the judgment creditor, or the judgment creditor's agent or attorney, after the expiration of ten days from the time the order overruling the motion is signed or from the time the motion is overruled by operation of law.
- (3) *Execution within Ten Days.* A writ of execution may be issued at any time before the tenth day after a final judgment is signed upon filing of an affidavit by the judgment creditor, or the judgment creditor's agent or attorney, that the judgment debtor is about to remove the judgment debtor's personal property subject to execution out of the county, or is about to transfer or secrete the judgment debtor's property for the purpose of defrauding the judgment debtor's creditors. In forcible detainer and forcible entry and detainer actions, a writ of execution may be prepared at any time before the fifth day after a final judgment is signed upon filing an affidavit as described in the sentence above.

**Rule EXE 4 (659). Contents of Writ<sup>29</sup>**

- (a) *General Requirements.* A writ of execution must be dated and signed by the clerk or the justice of the peace, bear the seal of the court, and be directed to the sheriff or any constable of any county within the State of Texas. The writ must require the sheriff or constable to execute it according to its terms, and to collect the amounts which have been adjudged against the judgment debtor and the further costs of executing the writ. It must describe the judgment by cause number, court number, the date the judgment was signed, and the names of the parties in whose favor and against whom the judgment was rendered. A correct copy of the bill of costs taxed against the judgment debtor must be attached to the writ.<sup>30</sup>

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<sup>29</sup> Existing Rules 630 through 633 have been collapsed into Rule **EXE 4 (659)**.

<sup>30</sup> In subdivision (a), the term "justice" has been changed to "justice of the peace." This is the first of many changes from "justice" to "justice of the peace" in the execution rules. Interestingly enough, a reading of the Justice Court Rules (numbered 523-91) reveals that the term "justice of the peace" is used only twice in those rules.

(b) *Command of Writ.*

- (1) *Money Judgment.* When a writ of execution is prepared for satisfaction of a money judgment, it must state the sum recovered or directed to be paid, the post-judgment rate of interest provided in the judgment, and the dates and amounts of any credits to the judgment identified by the judgment creditor, the judgment creditor's agent or attorney. It must command the sheriff or constable to satisfy the judgment and costs out of the property of the judgment debtor subject to execution. If the judgment fails to specify the rate of post-judgment interest numerically, the clerk or justice of the peace must include the rate of post-judgment interest in effect on the date the judgment was signed.<sup>31</sup>
- (2) *Judgment for Sale of Particular Property.* A writ of execution prepared upon a judgment for the sale of particular tangible or intangible personal property or real property must describe the property with specificity, and must command the sheriff or constable to conduct the sale by giving the public prior notice of the time and place of sale required by law and these rules.

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Additionally, the requirement that the clerk or justice of the peace sign "officially" has been eliminated. The rule now provides simply that the clerk or justice of the peace must sign the writ.

<sup>31</sup> Existing Rule 630 requires the writ to specify "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 is rare that a writ state "the sum actually due when it is issued"; rather, the writ lists "credits to the judgment." The Execution Rule Subcommittee has proposed replacing the phrase "the sum actually due when it is issued" with "the dates and amounts of credits to the judgment." This will provide the officer handling the writ an exact means of calculating the balance to be collected upon receipt of the writ.

Although the judgment-interest statute provides that judgments "shall" state a rate of interest, they often do not state it at all or state it in a manner other than a numerical rate of interest. While the Execution Rule Subcommittee did not think the burden of providing a rate of interest should be on the clerk or on the officer executing the writ, the Task Force thought the clerk would be in a position to include the post-judgment interest rate as published by the Office of Consumer Credit Commissioner. The Execution Rule Subcommittee suggested that the language "the rate of interest upon the sum due" be replaced with "the post-judgment rate of interest," and that a comment direct the clerk to the Office of Consumer Credit Commissioner when a numerical rate is not stated in the judgment.

The "sum recovered or directed to be paid" will be reflected on the face of the judgment; however, the dates and amounts of credits to the judgment will be known only to the plaintiff, or the agent or attorney requesting the writ. Therefore, the Execution Rule Subcommittee suggested these items be "provided by the judgment creditor, the judgment creditor's agent or attorney requesting the writ."

Finally, it was decided that if the judgment fails to provide for post-judgment interest that case law supports, the judgment nevertheless bears interest at the post-judgment rate; accordingly, the clerk is now charged with including the post-judgment rate in effect at the time of the judgment. See the last sentence of paragraph (b)(1).

- (3) *Judgment for Delivery of Possession.* A writ of execution prepared upon a judgment for the delivery of the possession of tangible or intangible personal property or real property shall describe the property with specificity and designate the party to whom possession was awarded. The writ must command the sheriff or constable to deliver the possession of the property to that party.
  - (4) *Judgment for Possession or Value.* A writ of execution issued upon a judgment for the possession of personal property or its value must command the sheriff or constable to levy and collect the personal property, or in case possession cannot be obtained, to levy and collect the specified value for which the judgment was recovered out of any property of the judgment debtor that is subject to execution.
- (c) *Return of Writ.* The writ must be made returnable to the court within thirty, sixty, or ninety days from the date of preparation,<sup>32</sup> as directed by the judgment creditor, or the judgment creditor’s agent or attorney. If the request for the writ fails to specify a return date, the writ must be returnable in ninety days.<sup>33</sup>

**Rule EXE 5 (660). Levy of Writ<sup>34</sup>**

- (a) *Timing and Extent of Levy.* The sheriff or constable who receives the writ of execution must:
- (1) endorse the writ with the exact hour and date of receipt;
  - (2) if the sheriff or constable receives more than one writ on the same day against the same person, the officer must number them in the order received; and

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<sup>32</sup> The term “issued” has been changed to “prepared.” Forms currently used by the clerks and justices of the peace may need to be modified accordingly.

<sup>33</sup> It is rare that a request for a writ of execution specifies the return date. The clerks would like clarification that a 90-day return date be the default, which is the current practice. The provision regarding return dates has been moved from existing Rule 621 to Rule **EXE 4 (659)**.

<sup>34</sup> Existing Rules 637, 639, 640, and 641 are collapsed into Rule **EXE 5 (660)**.

Existing Rule 638 has been omitted. The rule is in conflict with Section 34.004 of the Texas Civil Practice and Remedies Code, which provides: “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.” Further, the judgment debtor has a duty to claim property as exempt and clearly may elect not to claim a particular exemption and designate otherwise “exempt” property for levy.

- (3) as soon as practicable,<sup>35</sup> proceed to levy on property subject to the writ that is found within the officer's county and is not exempt from execution, unless otherwise directed by the judgment creditor, or the judgment creditor's agent or attorney.
- (b) *Judgment Debtor's Opportunity to Designate Property.* Immediately prior to levy, the sheriff or constable shall make a reasonable attempt to contact the judgment debtor, or its attorney or agent, and provide the judgment debtor the opportunity to designate property for levy. The levy shall first be made upon the property designated by the judgment debtor or its agent or attorney. If in the opinion of the sheriff or constable the property designated will not sell for enough to satisfy the judgment, execution and costs of sale, the officer must require an additional designation by the judgment debtor. If no property or insufficient property has been designated by the judgment debtor or its agent or attorney, the officer shall levy upon any property of the judgment debtor that is subject to execution.
- (c) *Method of Levy on Particular Property.*
  - (1) *Real Property.* Levy on real property is made by the sheriff or constable describing the property on the return and immediately filing for record a copy of the writ and return with the county clerk of each county in which the property is located.
  - (2) *Personal Property to which Judgment Debtor is Entitled to Possession.* When the judgment debtor has an interest in personal property and is entitled to possession, levy on personal property is made by taking possession. If the property is bulky or taking possession is otherwise impractical, the sheriff or constable may levy by seizing the property in place, in which case the sheriff or constable must affix a notice of seizure to or near the property.<sup>36</sup>
  - (3) *Personal Property to which Judgment Debtor is Not Entitled to Possession.* When the judgment debtor has an interest in personal property, but is not entitled to possession, levy is made on the property by giving notice to the person who is entitled to possession, or one of them when there are several. The notice of levy shall be given by the sheriff or constable in person or by certified mail.<sup>37</sup>

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<sup>35</sup> Section 34.072(b) of the Texas Civil Practice and Remedies Code specifically overrides the requirement in existing Rule 637 to levy "without delay" and merely provides that the officer handle the writ in a timely manner so that the sale can occur before its expiration. The Execution Rule Subcommittee omitted the "without delay" requirement in Rule **EXE 5 (660)**. Another option is to add a footnote providing that Section 34.072(b) has modified the officer's duties.

<sup>36</sup> The provision for levy in place is new, although it is a common practice.

<sup>37</sup> Existing Rule 639 provides that if property in which the debtor has no current right to possession is subject to levy, notice of levy is given to the person who is entitled to possession of the property. The rule

- (4) *Livestock Running at Large on the Range.* Levy upon livestock running at large on the range, and which cannot be herded and penned without great inconvenience and expense, may be made by designating a reasonable estimate of the number of animals and describing them by their marks and brands, or either. The levy shall be made in the presence of two or more credible persons, and notice of the levy shall be given in writing to the owner or the owner's herder or agent, if residing within the county and known to the officer.
- (5) *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 sheriff or constable seizing and taking possession of the certificates. Provided, however, that nothing herein shall be constructed as restricting any rights granted under section 8.112 of the Texas Business and Commerce Code.<sup>38</sup>
- (d) *Persons Attending Levy.* Neither the judgment creditor nor the judgment creditor's agent or attorney shall be required to attend a levy or to be physically present to designate property for seizure. The sheriff or constable conducting the levy may, in the officer's discretion, allow or prohibit the presence of the judgment creditor, or the judgment creditor's agent or attorney, when levy is made.<sup>39</sup>

#### **Rule EXE 6 (661). Levy on Mortgaged or Pledged Property<sup>40</sup>**

A judgment debtor's interest in real or personal property previously sold, pledged, assigned, mortgaged, or conveyed in trust for any debt or contract, may be levied upon

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does not specify the manner of giving notice. The Execution Rule Subcommittee proposed specifying the manner in paragraph (c)(3).

<sup>38</sup> The reference to Section 8.112 of the Texas Business and Commerce Code replaces the outdated reference in existing Rule 641 to Section 8.317 of the Texas Uniform Commercial Code.

<sup>39</sup> Some officers attempt to require the judgment creditor's attorney to accompany them on a levy. This is impractical and can be unsafe. Others prefer that the attorney not go, and should be able to do their job without the burden of protecting the attorney if the judgment debtor is unruly. New subdivision (d) addresses these issues.

<sup>40</sup> The Execution Rule Subcommittee has proposed revising or clarifying existing Rule 643 to address the problems created by *Grocer's Supply v. Intercity Investments*, in which the judgment creditor was assessed damages for levying on pledged goods. *Grocer's Supply* referred to existing Rule 643 and then Section 9.311 of the Texas Business and Commerce Code, but did not address them and instead relied on out-of-state case law. The case did not mention Section 34.004 of the Texas Civil Practice and Remedies Code. Revised Article 9 at 9.401, fn 6 leaves the issue "to the courts." Section 34.004 of the Texas Civil Practice and Remedies Code provides: "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." Because Section 34.004 addresses "property," not just "goods," rewritten Rule **EXE 6 (661)** relates to all property.



and sold at execution unless the purchaser, secured party, assignee, mortgagee, or trustee points out other property of the judgment debtor that is located in the county and is sufficient to satisfy the execution.

- (a) *Notice of Levy to Non-Parties.* As soon as practical after levy, the judgment creditor, or the judgment creditor's attorney or agent, must give written notice of levy to all persons whose existing interests appear of public record or are known to the judgment creditor; the notice must be given by certified mail, return receipt requested. If the existing interest appears of public record, the notice shall be sent to the most recent address found in the public records that reflect the interest; otherwise, the notice shall be sent to the last-known address.
- (b) *Effect of Sale.* If sufficient other property cannot be substituted, the property under levy shall be sold at execution. The purchaser of that property takes the property subject to any pre-existing sale, pledge, mortgage or conveyance.

PROPOSED COMMENT TO RULE **EXE 6 (661)**: A judgment debtor may have significant equity in encumbered assets. This does not render the assets exempt from the claims of judgment creditors. The rule has been rewritten to take into account the provisions of Section 34.004 of the Civil Practice and Remedies Code and to clarify the rights of judgment creditors to reach the equity in the property via the execution process.

**Rule EXE 7 (662). Execution Superseded**<sup>41</sup>

- (a) *County or District Court.* In the event enforcement of a judgment is suspended pursuant to the Texas Rules of Appellate Procedure, the clerk shall immediately issue a writ of supersedeas suspending all further proceedings under any execution previously issued.
- (b) *Justice Court.* Upon the perfection of an appeal from justice court, enforcement of the writ of execution is suspended.

**Rule EXE 8 (663). Replevy Rights**<sup>42</sup>

- (a) *Replevy Bond.* After notice, hearing and order of the court,<sup>43</sup> the judgment debtor may obtain the return of personal property seized in execution by posting a bond

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<sup>41</sup> Rule **EXE 7 (662)** is modeled after existing Rule 634. See also Texas Rule of Appellate Procedure 24.1(f).

Existing Rule 635 has been deleted because it was never used per subcommittee members and per an informal survey of justices of the peace.

<sup>42</sup> Existing Rules 644-46 have been collapsed into renamed Rule **EXE 8 (663)**.

with the clerk or justice of the peace, payable to the judgment creditor, with one or more good and sufficient sureties, and conditioned that the judgment debtor will:

- (1) deliver the property for execution sale to the sheriff or constable at the time and place stated in the bond; and
  - (2) to the extent the property is not delivered to the sheriff or constable, pay the officer the property's stated fair value, which shall not exceed the amount of the judgment.
- (b) *Other Security.* In lieu of a replevy bond, the judgment debtor may deposit cash or other security in compliance with Rule 14c.
- (c) *Property May be Sold by Judgment Debtor.* Where property has been replevied, the judgment debtor may sell or dispose of the property and must pay the sheriff or constable the value stated in the bond.
- (d) *Forfeiture of the Replevy Bond or Other Security.* If the property is not delivered according to the terms of the bond or other security, and the property's value is not paid, the sheriff or constable must notify the clerk or justice of the peace, who shall then endorse the bond "Forfeited." Upon forfeiture, if the judgment remains unsatisfied in whole or in part, the clerk or justice of the peace must issue a writ of execution against the judgment debtor and sureties on the bond, if any, for the amount due, not exceeding the value of the property stated. After forfeiture, no further replevy shall be allowed for the underlying property that was not returned, and the writ shall be endorsed accordingly.

PROPOSED COMMENT TO RULE **EXE 8 (663)**: The term "replevy bond" is used instead of "delivery bond." The change is made solely for consistency among the terms used in the rules in general, rather than for substantive purposes.

**Rule EXE 9 (664). Sale After Levy<sup>44</sup>**

- (a) *Sale of Real Property.*
- (1) *Time and Place of Sale.* Real property under levy of execution shall be sold at public auction, on the first Tuesday of the month, between the hours of 10:00 a.m. and 4:00 p.m. The sale shall take place at the

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<sup>43</sup> The Task Force was concerned about the officer setting the delivery bond, so the Execution Rule Subcommittee changed the term "officer" in subdivision (a) to "court" and added the notice and hearing requirements to provide a means for the judgment creditor to have input when the bond amount is set.

<sup>44</sup> The Execution Rule Subcommittee collapsed existing Rules 646a, 647, 649, and 650 into Rule **EXE 9 (664)**.

courthouse door of the county, unless the court orders that the sale be at the place where the property is situated.

- (2) *Notice.* The time and place of sale of real property under execution, order of sale, or venditioni exponas, shall be advertised by the sheriff or constable by publishing the notice in the English language once a week for three consecutive weeks preceding the sale, in some newspaper published in the county. The first of the publications shall appear not less than twenty days immediately preceding the day of sale. The notice shall state the authority by which the sale is to be made, the time of levy, and the time and place of sale. The notice shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall be entitled to charge for the publication at a rate equal to but not in excess of the published word or line rate of that newspaper for the same class of advertising. If there is no newspaper published in the county, the officer shall then post the written notice in three public places in the county, one of which shall be at the courthouse door of the county, for at least twenty successive days before the day of sale. The sheriff or constable making the levy must give a copy of the notice, either in person or by mail, to the judgment debtor, or the judgment debtor's attorney or agent, and to the judgment creditor, or the judgment creditor's attorney or agent.
  - (3) *If Not Sold.* If the real property is not sold pursuant to the levy, the sheriff or constable who made the levy must file for record a release of levy with the county clerk of each county in which the property is located. The cost of filing the release shall be taxed as a cost of executing the writ.
  - (4) *Expenses.* The officer is entitled to retain from the proceeds of a sale of real property an amount equal to the reasonable expenses incurred in making the levy and keeping the property.
- (b) *Sale of Personal Property.*
- (1) *Time and Place of Sale.* Personal property under levy of execution shall be offered for sale on the premises where it is taken in execution, or at the courthouse door of the county. The sale may be held at some other place if, given the nature of the property, it is more convenient to exhibit it to purchasers at such place. Personal property that can be readily exhibited shall not be sold unless the property is present and visible to sale attendees. However, the following property need not be present at the time of sale:

- (A) interests in business organizations;<sup>45</sup>
  - (B) property in which the judgment debtor has only an interest without right to exclusive possession; and
  - (C) livestock running at large on the range. The purchaser of livestock at the sale is authorized to gather and pen the livestock and select the livestock up to the number purchased.
- (2) *Notice of Sale of Personal Property.*<sup>46</sup> The time and place of sale of personal property under execution, order of sale, or venditioni exponas, along with a brief description of the property to be sold, must be posted for ten consecutive days immediately preceding the date of sale at both the courthouse door of the county and at the place where the sale is to be made. The sheriff or constable making the levy must give a copy of the notice, either in person or by mail, to the judgment debtor, or the judgment debtor's attorney or agent, and to the judgment creditor, or the judgment creditor's attorney or agent, as well as any person who received notice of the levy.<sup>47</sup> The time and manner of notice and sale of personal property may be revised by court order upon determination that the property is perishable.<sup>48</sup>
- (3) *Expenses.* The officer is entitled to retain from the proceeds of a sale of personal property an amount equal to the reasonable expenses incurred in making the levy and keeping the property.

PROPOSED COMMENT TO RULE **EXE 9(b) (664(b))**: Revisions to Section 34.073(b) of the Civil Practice and Remedies Code clarified that an officer does not have a duty to

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<sup>45</sup> Existing Rule 649 refers to “shares of stock in joint stock or incorporated companies[.]” The more inclusive language here accounts for the ever-changing types of business entities and their governances by the Texas Business Organizations Code.

<sup>46</sup> Existing Rule 649 refers to “[p]revious notice[.]” The Execution Rule Subcommittee struck the term “previous” from the rule.

<sup>47</sup> In practice, most constables also give notice to the judgment debtor of the sale of personal property. The Execution Rule Subcommittee suggested, in the interest of fairness to the defendant, that a provision for notice be added for sales of personal property, which tracks the notice for sales of real estate. The Subcommittee also suggested that the judgment creditor, or the judgment creditor's attorney, should receive notice of all sales to ensure coordination with the officers handling one or more executions. Accordingly, the Subcommittee recommended that all sales provide: “The officer making the levy shall give the judgment creditor, or the judgment creditor's attorney, and the judgment debtor, or the judgment debtor's attorney, written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements.” As indicated, the Subcommittee's language has been modified to an extent in this draft.

<sup>48</sup> The Execution Rule Subcommittee added this sentence to paragraph (b)(2) because all of the other ancillary rules address the sale of perishable personal property.

levy on or sell property that is not within the officer's county unless it is real property that is located in part in the officer's county and located in part in a contiguous county.

**Rule EXE 10 (665). "Courthouse Door" Defined<sup>49</sup>**

The "courthouse door" of a county means either the principal entrance to the building provided by the county commissioners' court as the county courthouse or any other location or area of the courthouse as the county commissioners' court shall designate. If for any reason there is no such building, the door of the building where the district court was last held in that county shall be deemed to be the courthouse door. Where the courthouse, or building used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where the building stood shall be deemed to be the courthouse door.<sup>50</sup>

**Rule EXE 11 (666). Extension of Return Date**

On request of the judgment creditor, the judgment creditor's agent or attorney, or on request of the officer who has levied on property under a writ of execution, the clerk must issue a writ of venditioni exponas which shall extend the return date on the existing writ of execution by thirty, sixty, or ninety days as requested by the judgment creditor, the judgment creditor's agent or attorney, or the sheriff or constable who has made the levy.<sup>51</sup>

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<sup>49</sup> This draft rule stems from existing Rule 648.

<sup>50</sup> The term "courthouse door" is important in execution for purposes of posting notice and for purposes of sale location. The Execution Rule Subcommittee thought the definition in existing Rule 648 may be antiquated and suggested amended it as provided in Rule **EXE 10 (665)**. This proposal was based on the understanding of several constables (both on and off the Task Force) that the place for sale is determined by the commissioners' court. The term appears to be defined in the Texas Rules of Civil Procedure alone; the Subcommittee found no definition elsewhere. Under Section 51.002(a) of the Texas Property Code, the role of the commissioners' court in designating "the area at the courthouse" where foreclosures should take place is not the same as the designation of "courthouse door." Thus, defining it relative to the commissioners' court may not accomplish the Subcommittee's goal.

<sup>51</sup> The term "venditioni exponas" is referenced in existing Rule 647, yet it is not defined in the rules or in any statute. The writ of venditioni exponas is used to extend the return date of a writ of execution on property under levy that cannot be sold before the return date of the writ of execution. While its only reference is in existing Rule 647, relating to notices of sales of real state, the writ has been used per case law to extend the life of the writ of execution on personal property as well. Regardless of the efforts of the officer and the plaintiff, sometimes real or personal property levied on cannot be sold before the writ expires — *i.e.*, discovery of errors in publication, delay in seizure of property due to acts of the defendant, etc.

### **Rule EXE 12 (667). Post-Execution Sale Matters<sup>52</sup>**

- (a) *When Judgment is Not Satisfied.* When the proceeds of the sale of property sold in execution are insufficient to satisfy the judgment, the sheriff or constable must levy on additional property, if any, sufficient to satisfy the balance owing on the judgment.
- (b) *Purchaser Failing to Comply.* If any successful bidder at execution sale fails to comply with the terms of the sale, upon the judgment creditor's motion and five days' notice to the purchaser, the purchaser shall be liable to pay the judgment creditor twenty percent of the value of the property determined by the court, in addition to costs. Should the property on a second sale bring a lower price, the purchaser shall be liable to pay to the judgment debtor all loss which the judgment debtor sustains thereby, to be recovered on motion as provided above.
- (c) *Resale of Property.* When the bidder fails to comply with the terms of the sale, the levying officer shall proceed to sell the same property again on the same day, if there is sufficient time. Otherwise, the officer shall re-advertise and sell the property as provided by these execution rules.
- (d) *Return of Execution.* The levying sheriff or constable must file a written return, signed by the sheriff or constable, stating concisely the officer's actions taken pursuant to the writ and the law. The return shall be filed with the clerk or justice of the peace. The execution shall be returned promptly if satisfied by the collection of the money or if ordered by the judgment creditor or the judgment creditor's attorney endorsed thereon.

### **Rule EXE 13 (668). Permanent Record of Execution**

The clerk of each court shall keep a permanent record of all executions as issued by the clerk and all returns thereon, which record shall be indexed and cross-indexed in the name of each judgment creditor and judgment debtor named therein.<sup>53</sup>

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<sup>52</sup> Existing Rules 651-654 were collapsed into one rule — Rule **EXE 12 (667)** —for matters after sale. In subdivisions (a) and (b), minor revisions were made to modernize the language. The Execution Rule Subcommittee suggested omitting existing Rule 655 because it is unnecessary and antiquated.

<sup>53</sup> Some clerks do not maintain the execution docket, even though they are required to do so. Some of the new electronic-filing software does not include the execution docket. The execution docket is considered a permanent record and therefore not subject to destruction. The Execution Rule Subcommittee found no cases citing existing Rule 656 (and by the way, many of the execution rules were not cited in any cases!). The Subcommittee did, however, search for the term "execution docket" in case law and found several cases in which the parties accessed the execution docket for information regarding land titles as affected by sheriff's sales and others where the docket was accessed for purposes of determining whether a judgment had been renewed. The key seems to be that events related to executions on judgments be part of a permanent record. Rule **EXE 13 (668)** addresses this permanent recordkeeping with a more modern approach.

#### **Rule EXE 14 (669). Effect of Death on the Execution Process<sup>54</sup>**

- (a) *Death or Termination of Representative.* When an executor, administrator, guardian, or trustee of an express trust dies, or ceases to be the executor, administrator, guardian, or trustee after judgment, execution shall issue in the name of the representative's successor, upon an affidavit of the death or termination being filed with the clerk or the justice of the peace, together with the certificate of the appointment of the successor under the hand and seal of the clerk of the court wherein the appointment was made.
- (b) *Death of Nominal Plaintiff.* When a nominal plaintiff dies after judgment, execution shall issue in the name of the party for whose use the suit was brought upon an affidavit of the death being filed with the clerk or the justice of the peace.<sup>55</sup>
- (c) *Death of Money Judgment Debtor.* If a sole judgment debtor dies after judgment for money against the judgment debtor, execution shall not issue thereon, but the judgment may be proved up and paid in due course of administration.
- (d) *Death of Judgment Debtor Involving Non-Money Judgment.* In any case of judgment other than a money judgment, where the sole judgment debtor, or one or more of several joint judgment debtors, dies after judgment, upon an affidavit of the death being filed with the clerk, together with the certificate of the appointment of a representative of the decedent under the hand and seal of the clerk of the court wherein the appointment was made, the execution on the judgment shall issue against the representative.

#### **Rule EXE 15 (670). Scire Facias to Revive Judgment**

On application of the judgment creditor, or the judgment creditor's agent or attorney, and subsequent order of the court, the clerk shall issue a scire facias for service

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It was suggested that execution records of justice courts have the same importance as those of county and district courts, especially with the increased jurisdiction. Thus, the Task Force considered and agreed to add the execution-docket requirement to the duties of the justice of the peace. When researching the justice-court rules, the Execution Rule Subcommittee found that Rule 524 provides that the justice "shall keep a civil docket in which he shall enter . . . [t]he time of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs; and when any execution is returned, he shall note such return on said docket, with the manner in which is was executed." Therefore, it appears that the specific rule for justice courts relating to their dockets already addresses executions.

<sup>54</sup> Existing Rules 623-626 are collapsed into one rule — Rule **EXE 14 (669)** — dealing with effect of death on the execution process. The rule's title is a modified version of the title to existing Rule 623: "On Death of Executor[.]"

<sup>55</sup> The language in subdivision (b) was modified to make the text consistent with the usual reference to nominal plaintiffs and the existing title. Additionally, because these rules deal with execution, the term "execution" was substituted for the term "proper process."

on the judgment debtor requiring the judgment debtor to appear and show cause why the judgment creditor's judgment should not be revived, as provided in section 31.006 of the Texas Civil Practice and Remedies Code.<sup>56</sup>

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<sup>56</sup> Writs of scire facias are addressed in existing Rules 151, 152, and 154 as they relate to the death of a plaintiff or defendant requiring the heirs, administrators, or executors to appear and prosecute or defend the pending suit. To the extent that the issuance and due-diligent service of writs of execution are required to extend the life of a judgment under Section 34.001 of the Texas Civil Practice and Remedies Code, the writ of scire facias as a means of reviving judgments per Section 31.006 of that Code may need to be included among the rules relating to writs of execution. If not among these rules, then it would be useful to the practitioner that this use of the scire facias and its contents be addressed elsewhere.

Rule **EXE 15 (670)** is couched in terms of a show-cause notice. Alternatively, it could be couched in terms of requiring an appearance as in the case of a citation, as provided in Texas Rule of Civil Procedure 154.



**Execution Statutes**  
**Texas Civil Practice & Remedies Code**

**§ 31.001. Passage of Title**

A judgment for the conveyance of real property or the delivery of personal property may pass title to the property without additional action by the party against whom the judgment is rendered.

**§ 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.

(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) With respect to turnover of property held by a financial institution in the name of or on behalf of the judgment debtor as customer of the financial institution, the rights of a receiver appointed under Subsection (b)(3) do not attach until the financial institution receives service of a certified copy of the order of receivership in the manner specified by Section 59.008, Finance Code.

(h) A court may enter or enforce an order under this section that requires the turnover of nonexempt property without identifying in the order the specific property subject to turnover.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 34.006. to 34.020 [Reserved for expansion]**

**§ 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 a court if the 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 recovery is determined by the market value at the time of sale of the property sold.

**§ 34.023. to 34.040 [Reserved for expansion]**

**§ 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 that 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 a defendant in execution may be sold on execution.

#### **§ 34.0445. Persons Eligible to Purchase Real Property**

(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 or 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 known 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 an 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.

#### **§ 34.049. to 34.060 [Reserved for expansion]**

**§ 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 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).

**§ 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 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 than the first anniversary of the date on which the injury accrues.

(d) An officer or a surety may defend the action by stating and proving 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.

**§ 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.