

NUTS AND BOLTS OF TURNOVER RECEIVERSHIPS

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POP QUIZ

The Answers May Not Be What You Think!
(The answers follow.)

1. Which of these elements are required to prove up a turnover receivership?
 - a. Applicant has an unsatisfied judgment.
 - b. 30 days have passed since the judgment.
 - c. Applicant has exhausted its remedies.
 - d. Other methods of collecting the judgment have failed.
 - e. Judgment debtor owns non-exempt property.
 - f. Judgment debtor's non-exempt property is difficult to levy upon by ordinary process.
 - g. The property is in danger of being lost, moved, or materially injured.
 - h. Judgment debtor has notice of the hearing.
2. Defendant argues on appeal that there is no record proving up the elements. Isn't it enough that there are deemed admissions?
3. The judge signed my Order Appointing Receiver before I put on any evidence. That was at least two months ago, so I'm good, appeal-wise. Besides, what could possibly go wrong?
4. Plaintiff submits a laundry list order but only proves up a golden widget at the turnover hearing. Which of the following are subject to turnover?
 - a. Only the golden widget.
 - b. Only the assets in the category of the laundry list order that would include property such as golden widgets.
 - c. All non-exempt property described in the order.
5. There is no record from the receivership hearing. Do either of the following support turnover relief?
 - a. Evidence at trial shows the defendant has non-exempt assets.
 - b. Evidence in a garnishment proceeding shows the defendant has non-exempt assets.
6. True or False: Wages are exempt in Texas.
 What if it is "salary" under the employment contract, not "wages"?
7. Texas Rangers' Mickey Rivers' contract deferred large portions of his salary to be paid well after he stopped playing for the Rangers. Is that current wages?
8. Can you intervene into a receivership to get a share of another judgment creditor's recovery?
9. Can you intervene into a receivership to protect your client's lien interest in property?
 - a. Sure, if you want to subject your client to the court's jurisdiction and risk an adverse ruling.
 - b. Turnover is a purely procedural device, so the trial court can't even adjudicate the debtor's property rights, let alone the rights of a third party.
10. Can you use turnover to get the debtor's property that is in the hands of a third party?
 - a. Yes, in some circumstances. (Tex. S. Ct.)
 - b. No, probably not. (Tex. S. Ct.)
 - c. Your call is very important to us. Please continue to hold. (Tex. S. Ct.)

POP QUIZ ANSWERS

1. The elements are a. and e.

Read more in section IV and on page ix. Local practice may differ. Read more in section III A 1.

2. Yes.

Read about it in section IV A.

3. Check out the horror story in section IV A.

4. The answer is c, notwithstanding *Hamilton Metals*, which ignores §31.002 (h). We now have opinion from other districts that correctly follow (h).

Read more in section IV G.

5. The answer is a. Evidence in the trial record supports turnover relief. Evidence in another proceeding (i.e. the garnishment) does not support turnover relief.

Read more about it in Section IV A.

6. Trick Question. *Current* wages for *personal services* are exempt from seizure. It doesn't matter if they call it salary or wages, but that was a nice try on the part of a creative attorney back in 1889. The exemption contemplates a master / servant relationship.

Read about it in section III G.

7. Yes. Read more about it in section III G 1

8. No.

Read more about it in section XII B.

9. The answer used to be a. Now, its b.

Read more about it in section XII and section VII K 15.

10. The answer was a, in 1991. Now, the answer is b & c.

Read more about it in section VII K 15.

How well did you do on the Pop Quiz?

Hmmm... might as well read the paper!

THE TURNOVER STATUTE

CPRC § 31.002 Collection Of Judgment Through Court Proceeding.

- (a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction, including a justice court, 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 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 non-exempt 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 non-exempt 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 non-exempt property without identifying in the order the specific property subject to turnover.

TEX. CIV. PRAC. & REM. CODE ANN. § 31.002

NUTS AND BOLTS OF TURNOVER RECEIVERSHIPS

I. INTRODUCTION AND SCOPE

This article discusses the basics of turnover law and the turnover receivership, including whether turnover may be used against a third party. It shows what a turnover receiver can do, from the perspective of a receiver with 30 years of experience and explains what you need to know to begin using turnover receivers in your collections practice. The article begins with a discussion of turnover in general, and then moves to issues specific to receivership.

II. HISTORY & RECENT AMENDMENTS

Known as the "turnover" statute, Tex. Rev. Civ. Stat. Ann. art. 3827a was enacted in 1979. The statute was codified in 1985, as § 31.002 of the Texas Civil Practice and Remedies Code. Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (West 2015). It has been amended in 1989, 1999, 2005, 2017, and 2019.

Prior to the turnover statute, it was too easy for a defendant to conceal property such as stock certificates and negotiable instruments from a levying officer. The traditional collection methods were inadequate for collecting intangibles such as accounts receivable and the debtor's interest in a cause of action. Under the turnover statute, the burden is placed on the defendant to identify and produce its leviable property and related documents. *Ex parte Johnson*, 654 S.W. 2d 415, 418 (Tex. 1983); *Cross, Kieschnick & Co. v. Johnston*, 892 S.W.2d 435, 438 (Tex. App.—San Antonio 1994, no writ); David Hittner, *Texas Post-Judgment Turnover & Receivership Statutes*, 45 Tex. Bar J. 417, 417-18 (1982) (citing House and Senate committee reports).

The 2017 amendment removed the element requiring proof that the debtor owns property that is not readily leviable by ordinary process. A lot of turnover case law is concerned with whether that element was satisfied. This is no longer an issue.

The 2019 amendment made it clear that a Justice Court may appoint a turnover receiver.

III. THE TURNOVER STATUTE: CPRC § 31.002 COLLECTION OF JUDGMENT THROUGH COURT PROCEEDING

The statute is a procedural device intended to help the judgment creditor collect its judgment from the debtor. *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223 (Tex. 1991). The statute provides that a judgment creditor is entitled to aid from a court in reaching the debtor's non-exempt assets. The creditor has to show that the judgment debtor owns assets that are non-exempt.

Because the statute is procedural and thus remedial in nature, as a general rule it should be given the most comprehensive and liberal construction possible. *Hayden v. Sacks*, 332 S.W.3d 524 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

The turnover statute is not used to determine the substantive rights of the parties or non-parties. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577, 583 (Tex. 2018) (per curiam). The statute's purpose is to ascertain whether an asset is either in the judgment debtor's possession or subject to its control. *Republic Ins. Co. v. Millard*, 825 S.W.2d 780, 783 (Tex.App.—Houston [14th Dist.] 1992, orig. proceeding).

The statute is meant to put a reasonable remedy in the hands of the diligent creditor. *Main Place Custom Homes, Inc. v. Honaker*, 192 S.W.3d 604 (Tex.App.—Fort Worth 2006, pet. denied); *Henderson v. Chrisman*, 05-14-01507-CV (Tex.App.—Dallas April 27, 2016, no pet.). The statute is open-ended in that it allows a judgment creditor to get aid in collection from the Court in the form of an order which requires the debtor to bring to the Court all documents or property used to satisfy a judgment. *Id.*; *Beaumont Bank, N.A.*, 806 S.W.2d at 226.

"It should be noted that post-judgment receivers should be appointed to collect *only* a specified judgment(s) as set out in the post-judgment motion. They should not be appointed to collect for other, nonparty creditors or to collect claims of the judgment creditor which have not been reduced to judgment." (emphasis in original) David Hittner, 45 Tex. Bar J. 417, at 421.

The trial court's post-judgment enforcement powers can last until the judgment is satisfied. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577, 581 (Tex. 2018) (per curiam).

Once a judgment is satisfied, the turnover order “loses its teeth and [is] of no further force and effect.” *Pandozy v. Beaty*, 254 S.W.3d 613 (Tex. App.—Texarkana 2008, no pet.). (Issues in appeal regarding a turnover order were moot because the judgment was paid.)

A. § 31.002 (a): “Entitled” To Turnover Relief?

1. Turnover Relief is Discretionary

The statute states that the judgment creditor is entitled to aid from the court (assuming the elements are proved). Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (a) (West 2015). Some districts read the turnover statute as discretionary, because 31.002 (b) states the court *may* grant the turnover relief set out in subsections (b) (1) – (3). *Barlow v. Lane*, 745 S.W.2d 451, 454 (Tex.App.—Waco 1988, writ denied); *Charles v. Tamez*, 878 S.W.2d 201 (Tex.App.—Corpus Christi 1994, writ denied); *Beeler v. Fuqua*, 351 S.W.3d 428 (Tex. App.— El Paso, 2011, pet. denied).

2. The Creditor Is Entitled... To A Hearing

In 1988, the Fifth District held that a judgment creditor is entitled to a hearing on turnover, so long as the judgment has not been superseded. The trial court had dismissed an application for turnover for want of jurisdiction while an appeal was pending. *Anderson v. Lykes*, 761 S.W.2d 831, 833-34 (Tex. App.-Dallas 1988, orig. proceeding).

3. The Creditor May Be Entitled To Turnover

A creditor may be entitled to turnover relief in the Fifth District. In 2010, The Fifth District held that a court abused its discretion in denying an application for a turnover order. The evidence showed that the judgment debtor, a corporation, owned 100% of the stock of another corporation and the debtor’s principal testified that he was unwilling to turn over the stock. *Europa International Ltd v. Direct Access Trader Corp*, 315 S.W.3d 654 (Tex. App.— Dallas, 2010, no pet.).

It was an abuse of discretion for the third judge on a case to omit the appointment of a receiver granted by the previous judge when issuing the modified judgment. *Olivarez v. Garza*, No. 13-20-00025-CV (Tex.App.—Corpus Christi-Edinburg November 18, 2021, no pet.).

B. § 31.002 (a): “...Through Injunction Or Other Means...”

Besides having the power to compel the defendant to turn something over, the statute also allows a court to enforce its judgment by restraining the defendant from taking some action. *Miga v. Jensen*, Nos. 02-11-00074-CV, 02-11-00167-CV (Tex.App.—Fort Worth March 8, 2012) (orig. proceeding, no pet.).

“Although the turnover statute does not specifically provide that a trial court can compel a judgment debtor to execute documents, *the statute does not limit the trial court’s powers to ordering the turnover of property and documents.*”

Burns v. Miller, Hiersche, Martens & Hayward, P.C., 948 S.W.2d 317, 328 (Civ. App.—Dallas, 1997, writ denied) (emphasis added).

C. § 31.002 (b) (1) Turnover to a sheriff or constable

The court may order the debtor to turn over its non-exempt assets and related documentation to a sheriff or constable. § 31.002 (b) (1).

D. § 31.002(b) (2) The court may “otherwise apply the property”

The court may otherwise apply the property to the satisfaction of the judgment. § 31.002 (b) (2). This section allows the court to order money placed into the registry of the court. Do not have property turned over directly to the creditor. “The potential for error or abuse where turnover is ordered directly to judgment creditors is obvious, considering that the statute allows *ex parte* entry of the order without notice and hearing.” *Ex parte Johnson*, 654 S.W.2d 415, 419 (Tex. 1983); *Lozano v. Lozano*, 975 S.W.2d 63 (Tex. App.—Houston [14th Dist.] 1998, pet. denied).

The same rule applies for cash as for tangible personal property. *Copher v. First State Bank of Pittsburg, Texas*, 852. S.W.2d 738 (Tex.App.—Fort Worth, 1993, no writ) (relying on *Ex Parte Johnson* and legislative history.)

The trial court in one case issued a writ of execution for the officer to sell internet domains, email addresses and telephone numbers at auction. The opinion sets out that the creditor is entitled to aid through injunction “*or other means*” (emphasis in opinion); that subsection (b)(2)’s options are permissive, and that the court “may” use the listed remedies. “The statute thus expressly gives the trial court powers beyond just mandatory injunctions (or appointing receivers) to achieve the statutory purpose of aiding judgment creditors in reaching hard to get assets to satisfy their judgments.” *CRE8 International LLC v Elexis Rice*, 05-14-00377-CV (Tex.App.—Dallas June 3, 2015, no pet.)(mem. op.).

E. § 31.002(b) (3) Turnover Receivership

The court may appoint a receiver with the authority to take possession of the non-exempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment. § 31.002 (b) (3).

F. § 31.002 (e) Attorney’s Fees

The judgment creditor is entitled to recover its costs, including reasonable attorney’s fees. § 31.002 (e). The plaintiff’s costs includes the receiver’s fee. Creditor’s counsel should prove up attorney fees at the turnover hearing.

The First and Fourteenth Districts (Houston) are split on what fees counsel are entitled to. It was not an abuse of discretion, in the First District, for the trial court to allow attorney fees for getting the debtor’s bankruptcy dismissed, making the assets available to the receiver. *Haden v. Sacks*, 332 S.W.3d 523, 531 (Tex.App.--Houston [1st Dist.] 2009, pet. denied.) The Fourteenth District only allows fees under § 31.002 (e) for successfully obtaining turnover relief, and not for work done afterward. *Feldman v. Watts*, 586 S.W.3d 591 (Tex.App.—Houston [14th Dist.] 2019, no pet.) (Strictly construing a Supreme Court of Texas opinion saying that a turnover order may award costs and attorney’s fees “for the turnover proceedings”. *Feldman*, at 595, citing to *Schultz v. Fifth Judicial District Court of Appeals at Dallas*, 810 S.W.2d 738, 739 n.3 (Tex. 1991) (abrogated on other grounds, *In re Sheshtawy*, 154 S.W.3d 114 (Tex. 2004)).

G. Exempt Property § 31.002 (a) (2)

1. Debtor has the burden.

Exempt property is not subject to turnover. § 31.002 (a) (2). It is proper to determine whether property is exempt in a turnover proceeding. *Stanley v. Reef Securities, Inc.*, 314 S.W.3d 659 (Tex.App.--Dallas 2010, no pet.); *Pace v. McEwen*, 617 S.W.2d 816, 819 (Tex.App.--Houston [14th Dist.] 1981, no writ).

The burden is on the defendant to show that property is exempt. *Yancey v. SLJ Company, LLC*, No. 05-21-00404-CV (Tex.App.—Dallas, December 7, 2022, no pet.); *Henderson v. Chrisman*, 05-14-01507-CV (Tex.App.--Dallas April 27, 2016, no pet.); *Goodman v. Compass Bank*, 05-15-00812-CV (Tex.App-- Dallas August 3, 2016, no pet.); *Stanley v. Reef Securities, Inc.*, 314 S.W.3d 659 (Tex.App.-Dallas 2010, no pet.); *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 948 S.W.2d 317, 324 (Civ. App.—Dallas, 1997, writ denied); *Jacobs v. Adams*, 874 S.W.2d 166, 167–68 (Tex. App.—Houston [14th Dist.] 1994, no writ); *Rucker v. Rucker*, 810 S.W.2d 793, 795–96 (Tex. App.—Houston [14th Dist.] 1991, writ denied).

However, once a homestead exemption has been established, the creditor who claims it was abandoned has burden to prove it. *Caulley v. Caulley*, 806 S.W.2d 795 (Tex.1991).

Not all property has to have its exempt status proven, for example property protected in the constitution or statute, such as Tex. Prop. Code. Ann. §42.002. *Roosth v. Roosth*, 889 S.W.2d 445, 460 (Tex.App.-Houston [14th Dist.] 1994, writ denied). A debtor who no longer owns property that is ordered to be turned over bears the burden to show it. (*Roosth*, at 460.)

2. Current Wages for Personal Services

GARNISHMENT OF WAGES. No current wages for personal service shall ever be subject to garnishment, except for the enforcement of court-ordered:

- (1) child support payments; or
- (2) spousal maintenance.

Tex. Const. art 16, § 28 (amended 1983 and 1999).

The term “current wages” implies a master servant relationship. *Karlseng v. Wells Fargo, N.A.* 05-13-01734-CV (Tex.App.--Dallas December 19, 2014, pet. denied) (The opinion contains references to several opinions for further study.); *Campbell v. Stucki*, 220 S.W.3d 562 (Tex.App.--Tyler 2007, no pet.).

Remember always the **current** in the current wages exemption. *Bell v. Indian Live-Stock Co.*, 11 S.W. 344 (Tex. 1889). Current wages are for the then current pay period. The exemption is intended to help people cover their daily living costs. It is not for people who can afford to have their employer hold their wages. In 1889, it was successfully argued that

“...this exemption was provided for the benefit of such employees as require their wages as they are earned to defray the expenses of their living, and not for the protection of persons who receive for their services \$200 per month, and whose circumstances are such that they are able to leave their earnings in the hands of their employer until the wages for more than three months have accumulated to their credit.”

Id., at 346. Later cases where the employer is holding the defendant's pay focus on whether the money was being involuntarily held by the employer (exempt!) or whether it was the defendant's decision for the employer to hold the money (non-exempt!). *Sloan v. Douglas*, 713 S.W.2d 436, (Tex.App.—Fort Worth 1986 (Writ ref'd n.r.e.)(Texas Rangers player's contract deferred salary for years after he quit playing. The contract controlled the payments, so player had no control. The wages remained "current" wages.) See also, *Marrs v. Marrs*, 401 S.W.3d 122 (Tex.App.--Houston[14 Dist.] 2011, no pet.) (Wages that flowed from the employer under a bankruptcy wage order to the bankruptcy trustee remained exempt when the Chapter 13 bankruptcy cratered.)

"Current" means an obligation of the employer that is presently enforceable, and that would otherwise be subject to garnishment. *Caulley v. Caulley*, 806 S.W.2d 795, 799 (Tex. 1991). *Caulley* was about an order for the turnover of paychecks under 31.002 (f). (Compare with *Bell v. Indian Live-Stock Co.* (Tex. 1889), which says "Current Wages" means the current pay period.)

Independent Contractors' commissions

The income of real estate agents and insurance agents are called commissions, but that isn't the commissions contemplated by the exemption. These folks are independent contractors.

The exemption is current wages / commissions for *personal services*. An independent contractor is not receiving money for "personal services". It is business income. *Campbell v. Stucki*, 220 S.W.3d 562 (Tex.App.--Tyler 2007, no pet.) (insurance agent); *Brasher v. Carnation Co.*, 92 S.W.2d 573 (Tex.Civ.App.—Austin 1936, writ dismissed) (a milk hauler).

Commissions from a multi-level marketing program were business income, not exempt commissions for personal services, in *Pamplin v. Stephenson*, No. 04-21-00208-CV, (Tex.App.—San Antonio March 29, 2023, no pet.)

Practice Tip: Look to the contract the debtor has with his "employer". Also, check whether the debtor receives a 1099 - "non-employee" compensation.

a. *What if it is someone else's wages?*

Nice try. Didn't work. A corporate debtor argued that the money in its garnished bank account was earmarked for its employees' wages. This was not exempt. The exemption is for the protection of the debtor, not others. Also, the debtor could just as well use the money to pay the light bill. Putting it into a "Payroll Account" doesn't change anything. *Simulis, L.L.C. v. G.E. Capital Corporation*, 276 S.W.3d 109 (Tex. App.-- Houston [1st Dist.] 2008, no pet.).

b. *Income to the firm before it becomes wages.*

Income coming into a business is not wages at that point, and so can be the subject of turnover. *DeVore v. Central Bank & Trust*, 908 S.W.2d 605 (Tex.App.-- Fort Worth 1995, no pet.).

An attorney's income from his firm is business income, not current wages. *Brink v. Ayre*, 855 S.W.2d 44 (Tex.App.—Houston [14th Dist.] 1993, no pet.); *DeVore*, at 610.

In *Newman v. Toy*, a case out of Austin, turnover of business income of an attorney's P.C. was proper. The issue was an order trapping funds coming into the firm before they would be paid to the attorney, but the opinion comments that salary paid to the attorney by his P.C. would be exempt.

c. *Savings Bonds*

Savings bonds purchased through payroll deductions are current wages. *Goebel v. Brandley*, 174 S.W.3d. 359 (Tex.App.--Houston [14th Dist.] 2005, pet. denied).

3. § 31.002 (f) Proceeds of Exempt Property

The proceeds of exempt property are not subject to turnover, except for enforcement of a child support obligation or a judgment for past due child support. § 31.002 (f).

Subsection 31.002 (f) was added to the turnover statute in 1989, prohibiting the turnover of proceeds of, or disbursement of property exempt under any statute (except for enforcement of a child support obligation). Prior to § 31.002 (f), a debtor could be made to turnover checks from the trustee of a spendthrift trust on the theory that the money lost its exempt status once it left the trust. Similarly, proceeds from the sale of exempt property could be ordered turned over. See, e.g., *Rucker v. Rucker*, 810 S.W.2d 793 (Tex. App.—Houston [14th Dist.] 1991, writ denied). Subsection (f) superseded these cases. *Burns v. Miller, Hiersche, Martens & Hayward P.C.*, 948 S.W.2d 317 (Tex. App.—Dallas, 1997, writ denied). Under subsection (f), the trustee's distribution check is not subject to turnover, even in the hands of the debtor. And, if the debtor sells exempt property, the proceeds are not subject to turnover.

Sub (f) does not apply to child support. When a father was jailed for failure to turn over his current paychecks to the receiver for child support, his writ of habeas corpus was denied. (Actually, it was an award for attorney's fees for

obtaining a child support order, which counts as child support.) *Ex parte Wessell*, 807 S.W.2d 17 (Tex. App.-- Houston [14th Dist.] 1991, orig. proceeding).

Wages in the hands of a Chapter 13 Trustee after the bankruptcy is dismissed remain exempt from turnover. *Marrs v. Marrs*, 401 S.W.3d 122 (Tex.App.—Houston [14th Dist.] March 2011, no pet.). The result in *Marrs* may have been different if the debtor's plan payments had not been paid directly to the trustee by her employer.

PRACTICE TIP: The wage exemption is for current wages. When making your proceeds of current wages sub (f) argument discuss the *current* in “current wages”.

Proceeds from the sale of a homestead remain exempt for 6 months, even if the money is not yet used to purchase another homestead. Tex. Prop. Code §41.001 (c); *London v. London*, 342 S.W.3d 768 (Tex. App.--Houston [14th Dist.] 2011, no pet.). (Creditor knew Debtor had planned to use proceeds to pay other creditors and obtained a turnover order compelling debtor to turn over the funds.)

You lose the exemption if you spend exempt proceeds to purchase non-exempt property. *Tidwell v. Roberson and Grimes & Fertitta, P.C.*, No 14-16-00170-CV (Civ.App.—Houston [14th Dist.] August 22, 2017, pet. denied) (Insurance proceeds from a homestead fire were used to buy non-exempt real property.)

Royalties from a mineral lease on the debtor's homestead are exempt proceeds. *Fitzgerald v. The Cadle Company*, No. 12-16-00338-CV (Tex.App.-- Tyler October 18, 2017, no pet.).

Bear in mind that sub (f) is purely a creature of the turnover statute. If you think you may have a sub (f) issue, consider a garnishment.

4. Money in the Bank

Money in the bank is fair game (except specifically exempt accounts, such as IRAs).

By putting the money into a bank account, a debtor/creditor relationship is created with the bank. The money has changed its character: it is no longer money; it is a debt owed by the bank to its customer. *Bandy v. First State Bank, Overton, Texas*, 835 S.W.2d 609, 619 (Texas 1992). The money loses its exempt status. *Schultz v. Cadle Co.*, 825 S.W.2d 151, 153-54 (Tex. App—Dallas 1992, writ denied).

Social Justice advocate Texas Appleseed acknowledges that a paycheck deposited into a bank account has lost its exemption (as of February 2024): <https://mydebtcollectionrights.org/guide/am-i-judgment-proof/my-paycheck-exempt>

5. Exceptions

a. *Social Security Payments*

An exception is Social Security benefits. Social Security benefits enjoy a federal exemption that is not destroyed when the money is deposited into an account. 42 U.S.C.S. § 407 (a) (LEXIS L. Publg. 2007); *Philpott et al v. Essex County Welfare Board*, 409 U.S. 413 (1973).

b. *IRA Distributions*

Amounts distributed from a retirement plan are exempt for 60 days, if the amounts qualify as a non-taxable rollover contribution to another qualifying account. Tex. Prop. Code § 42.0021 (c).

c. *W.T.J. v. S.L.S.*

The trial court in *W.T.J. v. S.L.S.* enjoined the defendant from spending the money in his bank accounts to the extent that the balance would fall below \$18,000 on any given month, which was the money due to his ex-wife. This was held to be an abuse of discretion because it was not shown that the money had a source other than current wages. However, neither side seems to have raised the issue about the character of the wages changing by being deposited into a bank. This was not a case of a receiver seizing the money; the debtor was enjoined from using it. *W.T.J. v. S.L.S.*, No. 03-10-00335-CV (Tex.App.-- Austin August 2012, no pet.) (mem. op.).

6. Subsection (f) and wages in the bank.

It has been established as far back as 1927 that wages deposited into the debtor's bank account lose their exemption. *Sutherland v. Young*, 292 S.W. 581 (Tex.Civ.App.--Waco 1927, no writ). So, under sub (f), are wages that have been deposited into the debtor's bank account still fair game or are they proceeds of exempt property that remain exempt?

Schultz v. Cadle Co. is a sub (f) case out of Dallas. Schultz received a salary from a clinic that he had a 50% interest in. He directed the clinic to deposit his salary into another entity that he owned. He and his wife used the account for household expenses. Schultz claimed the wages remained exempt.

The Dallas Court of Appeals held that the debtor lost his exemption when he put the money into his other entity. It was viewed as simple income to that entity. The Court looked to *Sutherland v. Young*, quoting,

“We have reached the conclusion that, when wages are paid to and received by the wage-earner, they thereby cease to be current wages, and the exemption statute does not apply thereto. Appellant, having taken his wages and voluntarily placed them in the bank and thereby created the relation of debtor and creditor between himself and the bank, caused the funds to be subject to garnishment, *the same as if he had invested the same in property that was not exempt to him under the statutes.*” (my emphasis) 825 S.W.2d 151, 153-54 (Tex. App.—Dallas 1992, writ denied).

Thus, the Dallas Court of Appeals keeps alive the long-standing rule from *Sutherland v. Young* that once money is deposited into a bank account, it loses its exemption.

In 1997, the Dallas Court of Appeals reversed a turnover order compelling the turnover of proceeds from a trust (among other things), under sub (f). *Burns v. Miller, Hiersche, Martens & Hayward P.C.*, 948 S.W.2d 317 (Tex. App.—Dallas, 1997, writ denied). However, *Miller, Hiersche* is distinguishable because it is a trust case. “The issue before us is whether section 31.002(f) prohibits the turnover of proceeds or distributions from spendthrift trusts.” *Burns*, at 323. It does not have to do with seizing money that had been deposited into a bank account. *Schultz* is much more on point.

At least one opinion uses Black’s Law Dictionary’s definition of proceeds: “The value of land, goods or investments when converted into money.” *Fitzgerald v. The Cadle Company*, No. 12-16-00338-CV (Tex.App.-- Tyler October 18, 2017, no pet.), citing Black’s Law Dictionary 1242 (8th Ed. 2004).

H. Turnover of a Cause of Action

The general rule is that a cause of action, including a personal injury action, is assignable, absent a statutory bar. *Charles v. Tamez*, 878 S.W.2d 201 (Tex.App.—Corpus Christi 1994, writ denied); *D & M Marine, Inc. v. Turner*, 409 S.W.3d 853 (Tex. App.-- Fort Worth 2013, no pet.). However, the general rule does not apply if the turnover would contravene public policy. *Criswell v. Ginsberg & Foreman*, 843 S.W.2d 304, 306-07 (Tex. App.—Dallas 1992, no pet.).

Practice Tip: You don’t need turnover of the debtor’s legal action. The receiver may levy the debtor’s anticipated recovery / settlement from the action, similar to a levy upon an account payable to the debtor.

1. Debtor’s Action Against Creditor

It is against public policy to allow a creditor to obtain turnover of its debtor’s cause of action against the creditor, because that would deprive the debtor of its day in court by extinguishing the debtor’s cause of action. *Id.*

2. Malpractice Actions

It is against public policy to obtain turnover of a legal malpractice claim. *Zuniga v. Groce, Locke & Hebdon*, 878 S.W.2d 313, 318 (Tex.App.—San Antonio 1994, writ ref’d); *Klevenhagen v. Hilburn*, Nos. 14-21-00042-CV, 14-21-00053-CV (Tex.App.—Houston [14th Dist.] November 15, 2022, no pet.).

Doing so would be tantamount to forcing a defendant to litigate a claim against his will, particularly in a very personal matter such as the attorney client relationship. The assignment of such a claim would relegate the legal malpractice action to the marketplace and convert it into a commodity to be exploited by someone who had no relationship at all with the attorney. *Charles v. Tamez*, 878 S.W.2d 201, 207 (Tex.App.—Corpus Christi 1994, writ denied) (quoting a California case).

A turnover order distorts the litigation of the debtor’s claims because it encourages the receiver to satisfy her judgment, if possible, through settlement, potentially in conflict with the debtor’s interest in obtaining exemplary or treble damages. *Goin v. Crump*, No. 05-18-00307-CV (Tex.App.—Dallas January 8, 2002, pet. denied).

3. Turnover of Counter Claim

The turnover of a counter claim against a third party, still in current litigation, was not proper in *In re Great Northern Energy, Inc.*, 493 S.W.3d (Tex.App.--Texarkana 2016, orig. proceeding). The creditor would not have an interest to pursue the claim with the same vigor as the debtor. Also, the counterclaim itself demonstrated defenses the defendant had against the plaintiff. Loss of the counter claim would impair Great Northern’s defense of the claims against it. The trial court suggested the creditor could attach the proceeds of a settlement when it occurred.

4. Action Against Insurer (Stowers Doctrine)

Ordering turnover of a potential Stowers Doctrine claim was not against public policy where the judgment debtor had not indicated that he was satisfied with his insurer’s failure to settle. Distinguished from cases where the insured

was content with his insurer's failure to settle and would not have sued the insurer himself. *Goggans v. Ford*, No. 05-15-00052-CV (Tex.App.-- Dallas May 11, 2016, pet. denied).

5. DTPA Claims

DTPA claims are not assignable. *PPG Industries, Inc. v. JMB/Houston Centers Partners Limited Partnership*, 146 S.W.3d 79 (Tex. 2004).

IV. THE TURNOVER HEARING: PROVING UP THE ELEMENTS

A. The Turnover Hearing & Prove-Up

The purpose of the hearing is to show the court that 1) the judgment remains unsatisfied and 2) the defendant owns non-exempt assets.

The statute requires a factual showing of the elements. *Schultz v. Fifth Judicial District Court of Appeals at Dallas*, 810 S.W.2d 738 (Tex. 1991) (abrogated on other grounds). It is reversible error (abuse of discretion) for a court to grant turnover relief without the showing required by the statute. *Clayton v. Wisener*, 169 S.W.3d 682, 683-84 (Tex. App.—Tyler 2005, no pet.); *Sivley v. Sivley* 972 S.W.2d 850 (Tex.App.—Tyler, 1998, no pet.); *Tanner v. McCarthy* 274 S.W.3d 311 (Tex.App.—Houston [1st Dist.], 2008, no pet.); *Anoco Marine Industrial, Inc. v. Patton Production Corp.*, No. 2-09-210-CV (Tex.App.—Fort Worth, April 8, 2010) (Need to show the judgment is unsatisfied); *Weir v. Sterling State Bank*, No. 05-16-00500-CV (Tex.App.—Dallas May 2, 2017, no pet. (mem. op.)).

Deemed admissions support turnover relief. *Troutman v. Nasa Federal Credit Union*, 02-21-00412-CV (Tex.App.—Fort Worth, August 18, 2022, no pet.); *Copeland v. Bluebonnet Financial Assets*, 05-21-00714-CV (Tex.App.—Dallas, June 7, 2023, no pet.).

A record does not have to have been made. No hearing is required. In *Copeland*, the Court took judicial notice of the file. The verified application contained the admissions. *Copeland*, at *405.

In 2017, the Fourteenth District said that a lack of evidence supporting turnover relief does not automatically invalidate the order, it is a relevant consideration as to whether the trial court abused its discretion. *Tidwell v. Roberson and Grimes & Fertitta, P.C.* No 14-16-00170-CV (Civ.App.—Houston [14th Dist.] August 22, 2017, pet. denied), citing to *Beaumont Bank N.A. v. Buller* 806 S.W.3d 223, at 226 (Tex. 1991). However, the Court was talking about the sufficiency of the evidence. *Tidwell* was not a case without an evidentiary hearing. There had been an evidentiary hearing in *Buller*. In *Buller*, the Court of Appeals found that there was no evidence supporting turnover, but the Court should have reviewed it under an abuse of discretion standard.

A turnover order is proper if the elements are met. *Henderson v. Chrisman*, 05-14-01507-CV (Tex.App.--Dallas April 27, 2016, no pet.).

However, if there is already evidence in the record that satisfies the elements, an evidentiary hearing is not required.

“Section 31.002 does not specify, or restrict, the manner in which evidence may be received in order for a trial court to determine whether the conditions of 31.002 (a) exist, nor does it require that such evidence be in any particular form, that it be any particular level of specificity, or that it reach any particular quantum before the court may grant aid under section 31.002.”

Tanner v. McCarthy, 274 S.W.3d 311, 322 (Tex.App.—Houston [1st Dist.], 2008, no pet.); *Vaccaro v. Raymond James & Associates, Inc.*, No. 02-22-00023-CV (Tex.App.—Fort Worth October 13, 2022, no pet.).

However, the evidence offered cannot be so weak as to only create a mere surmise or suspicion of its existence, which would not count as evidence. *Robison v. Watson*, 04-20-00138-CV (Tex.App.—San Antonio May 26, 2021 (mem.op.) (citing *Kindred v. Con/Chem, Inc.* 650 S.W.2d 61, 63 (Tex. 1983)).

The trial court must determine that the elements have been satisfied before it enters the turnover order. *Tanner*. See also, *Main Place Custom Homes, Inc. v. Honaker*, 192 S.W.3d 604, 627 (Tex.App.—Fort Worth 2006, pet. denied). In *Main Place Custom Homes*, the trial court ordered turnover as part of the trial judgment. It was not necessary to have held a separate hearing on turnover, but the order was reversed because the record did not show the elements had been established.

The evidence must actually be before the court at the hearing. In one case, the creditor filed a motion for sanctions at the same time it filed the application for turnover. On the same day, they also filed an application for a writ of garnishment. The turnover application was submitted with no evidence other than a copy of the judgment and an order denying another motion. There was no affidavit submitted with the application. On appeal, the creditor argued that the court had the discretion to consider all of the evidence before it, including evidence submitted in support of the motion for sanctions. Both motions were heard at the same time. However, the turnover order stated that the Court

had considered the application and the arguments of counsel. Neither the application nor the arguments of counsel were evidence. There was evidence submitted with regard to the sanctions motion, but at the hearing the judge never reached the evidence. The sanctions issue was resolved on jurisdictional points. There was evidence submitted as part of the application for the writ of garnishment, but that case was filed under a separate file number. That evidence was not before the court because that file was not before the court at the hearing. The turnover order was vacated. *HSM Development, Inc. v. Barclay Properties, Ltd.*, 392 S.W. 3d 749 (Tex.App.-- Dallas 2012, no pet.).

There was a similar ruling out of Corpus Christi, in 2013. The appellees, who had obtained three turnover orders, did not support their applications for turnover relief with affidavits or verifications. The appellants' responsive pleadings did contain affidavits. There was no evidence to support turnover. *Paul Black, et al. v. Toby Shor and Seashore Investments Management Trust*, 443 S.W.3d 170 (Tex.App.-- Corpus Christi 2013, pet. denied).

In *Cortez v. Mann Bracken LLP*, the appellant failed to bring forth a sufficient record to demonstrate error. The appellate court must presume that the omitted documents would support the trial court's decision. No. 03-09-00615-CV (Tex.App.-- Austin, September 22, 2011, no pet.) (mem. op.).

Then again, the Third District Court of Appeals was not bothered that there was no record made at the turnover hearing in *Schulze v. Cap Collection JV7*. There was sufficient evidence in the record already. No. 03-03-00390-CV (Tex. App.—Austin, Sept. 23, 2004, pet. dismissed) (mem. op.). See also, *Heilmann v. Heilmann*, No. 04-18-00849-CV (Tex. App.—San Antonio, October 28, 2020, no pet.).

What if the evidence is “stale”? In *Blunck v. Blunck*, the judgment debtor argued (among other things) that his divorce decree wasn't good evidence of assets he still owned because the decree was a couple of years old. He also complained that his trust document and bankruptcy schedules were not evidence because they were not self-authenticating. Between all three, there was “some evidence” of a substantive and probative character to support the turnover order. The issue was overruled. No. 03-15-00128-CV (Tex.App.--Austin, February 18, 2016, pet. denied) (Mem. Op.).

Interrogatory answers that were four years old and not verified supported turnover in *Myers v. HCB Real Holdings, LLC.*, 05-20-00419-CV (Tex.App.—Dallas, September 19, 2022, pet. denied).

Also, once an asset is traced to a judgment debtor, a presumption arises that the assets are in the debtor's possession. The burden shifts to the debtor to account for the asset. *Blunk*, using *Beaumont Bank N.A. v. Buller* 806 S.W.3d 223, at 226 (Tex. 1991). It is not enough for the debtor to simply allege the money was spent (i.e. that therefore, there are no non-exempt assets) without providing an accounting. *Yancey v. SLJ Company, LLC*, No. 05-21-00404-CV (Tex.App.—Dallas, December 7, 2022, no pet.), with a *See* designation to *Beaumont Bank*, at 227.

Practice Tip: Do not confuse what you have to prove up (a piece of non-exempt property) with the relief that you can get. Proving up one item of non-exempt property does not limit turnover to that one item. See, 31.002(h); *Yancey v. SLJ Company, LLC*, No. 05-21-00404-CV (Tex.App.—Dallas, December 7, 2022, no pet.).

A Horror Story: Two receiverships. Receiver 1 demands Receiver 2, who was appointed well after R1, to stop selling debtor's real property and to turnover sales proceeds. R1 gets a TRO. R2 files a motion to vacate- no evidence to support T/O relief in Case 1. Trial Court 1 denies R2's motion and orders Plaintiff 2 to turnover the money they've gotten so far. Dallas Court of Appeals on writ of mandamus says trial court abused its discretion in granting T/O without evidence and reminds everyone that we don't use T/O against third parties like P2. The order against P2 was reversed; the rest was remanded. Upon remand, the trial court vacated its order against P2. The rest is set on the DWOP docket for April 2024. R2 prevailed due to P1's sloppiness or laziness. *Diaz Fisher & Fisher v sms Financial Small Cap LLC*, 05-21-00696-CV (Civ.App.—Dallas, Aug 20, 2023 Dallas, orig. proceeding.).

B. Tanner v. McCarthy: Subsection (h) v. Subsection (a)

In *Tanner*, the creditor's position was that because the turnover application and order do not need to mention specific assets to be turned over per § 31.002 (h), no evidence is required and, therefore, a hearing is not necessary. 274 S.W.3d 311 (Tex.App.—Houston [1st Dist.], 2008, no pet.). The argument was that subsection (h) conflicts with subsection (a), which at the time required a showing that the judgment debtor owns non-exempt property that is difficult to levy upon.

The opinion makes it plain that there is no conflict between subsections (a) and (h).

The order and application do not have to mention any specific property. This does not conflict with the requirement that the applicant has to show the court *something*. In my view, the applicant proves up one piece of non-exempt property and the door opens wide. You do not have to tip off the debtor by describing the property in your application. Just be sure to prove it up.

The creditor's problem in *Tanner* was that he did not prove up any asset at all and argued that he did not have to. *Blunck v. Blunck* followed the reasoning in *Tanner*, 03-15-00128-CV (Tex.App.--Austin, February 18, 2016, pet. denied) (Mem. Op.) (Divorce decree awarding property was sufficient to support turnover relief, even though the decree was a few years old.)

C. The Elements

The elements to prove up are that the applicant's judgment remains unsatisfied and that the judgment debtor owns assets that are non-exempt. Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (a).

If your post judgment collection procedures include serving post judgment interrogatories, make it a practice to also serve a Request For Admissions. When ignored, the admissions are deemed admitted, which proves up the elements. (Appendix 12).

An attorney's affidavit that plaintiff had made good faith efforts to collect on the judgment and that she had an "...understanding that [defendant] owns non-exempt assets that can be levied to satisfy his debt, including bank accounts, income, personal property, and interest in real property" did not support turnover relief. *Vaccaro v. Raymond James & Associates, Inc.*, No. 02-22-00023-CV (Tex.App.—Fort Worth October 13, 2022, no pet.). Your good faith belief that there are non-exempt assets to be had does not support turnover.

1. No injunction elements.

The traditional elements for granting an injunction are not required under the turnover statute. *Henderson v. Chrisman*, 05-14-01507-CV (Tex.App.--Dallas April 27, 2016, no pet.).

2. Do you only get turnover of the property you proved up?

No. § 31.002 (h); *Yancey v. SLJ Company, LLC*, No. 05-21-00404-CV (Tex.App.—Dallas, December 7, 2022, no pet.).

The statute puts the burden on the debtor to identify its non-exempt assets. *Beaumont Bank v. Buller*, 806 S.W.2d 233, 226 (Tex. 1991). *Tanner v. McCarthy*, 274 S.W.3d 311, 321; (Tex.App.—Houston [1st Dist.], 2008, no pet.); *Blunck v. Blunck*, No. 03-15-00128-CV (Tex.App.--Austin, February 18, 2016, pet. denied) (Mem. Op.); *W.T.J. v. S.L.S.*, No. 03-10-00335-CV (Tex.App.--Austin August 2012, no pet.) (mem. op.).

a. *Laundry List Order*

There is a troublesome case out of Houston (Fourteenth District), *Gillet v. Zupt, LLC*, ruling that for each category of property in a laundry list order, you have to identify property. 14-15-01033-CV (Tex.App.--Houston [14th Dist.] February 23, 2017, no pet.) *Gillet* follows a portion of the opinion in *Stanley v. Reef Securities, Inc.*, 314 S.W.3d 659 (Tex.App.--Dallas 2010, no pet.).

I strongly disagree with those portions in *Stanley* and with *Gillet v. Zupt, LLC*, because they go against the very purpose of the turnover statute and especially against the legislative intent of subsection (h) (Provided herein at Appendix 13.)

Gillet draws from *Tanner v. McCarthy*, but *Gillet* overlooks an important bit of reasoning from *Tanner*:

"Indeed, section 31.002 does not require that a judgment creditor seeking a turnover order identify all, or **even any of the judgment debtor's assets** that are to be the subject of the turnover order, nor does the statute require the trial court to identify the specific property subject to turnover in its turnover order. Accordingly, the statute does not require the trial court to hold a hearing to receive evidence on each specific asset subject to turnover prior entering a turnover order against a judgment debtor."

Tanner, p. 321. (citing the statute)(emphasis added).

The statute puts the burden on the defendant to identify and turnover its non-exempt assets. *Beaumont Bank v. Buller*, 806 S.W.2d 233, 226 (Tex. 1991). *Ex parte Johnson*, 654 S.W. 2d 415, 418 (Tex. 1983); *Cross, Kieschnick & Co. v. Johnston*, 892 S.W.2d 435, 438 (Tex. App.—San Antonio 1994, no writ); David Hittner, *Texas Post-Judgment Turnover & Receivership Statutes*, 45 Tex. Bar J. 417, 417-18 (1982) (citing House and Senate committee reports). The point of the statute was to update early law that required a creditor to give a judgment creditor notice of what asset to hide. It was meant to be an "open-ended" remedy. *Hittner, Id.* The statute's purpose is to put a reasonable remedy in the hands of a diligent judgment creditor, subject to court supervision. *Id.*

After the statute was enacted, a line of cases developed holding that an order must state specific property to be turned over. Subsection (h) was enacted in 2005 to clarify that identification of specific property is absolutely not required.

When subsection (h) was in committee, opponents expressed a concern that a debtor might be held in contempt for failure to turn over non-existent property. For example, a debtor compelled to turn over all widgets would be at risk of contempt if he had no widgets to turn over.

The way to reconcile a fear that a debtor would have to answer for property that does not exist with the intent of the statute is to deal with it at a later contempt hearing. A creditor filing such a contempt motion would have to demonstrate that an asset actually existed and was in the possession or control of the debtor. As a practical matter, a receiver who didn't find any asset in a particular category would simply move on to find other kinds of assets.

The rulings that a piece of property from each category of property listed in a "laundry list" order must be proven flies in the face of the legislative intent and robs judgment creditors of one of their best tools for collection. If followed, collection law would revert back to where it was before 1979, when a creditor who found an undisclosed asset would have to go back to court, yet again, to apply the property to the satisfaction of its judgment.

D. No Need to Show Creditor Exhausted Its Remedies

You do not have to show that the creditor has exhausted other methods of collecting its judgment. *Universe Life Insurance Company v. Giles*, 982 S.W.2d 488 (Tex.App.—Texarkana 1998, pet. denied). *Hennigan v. Hennigan*, 666 S.W.2d 322, 323 (Tex.App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.); *Childre v. Great Sw. Life Ins. Co.*, 700 S.W. 2d 284, 288 (Tex. App.—Dallas 1985, no writ).

It is not necessary to show that a writ of execution has been returned *nulla bona*. *Childre v. Great Sw. Life Ins. Co.*, 700 S.W. 2d 284, 288 (Tex. App.—Dallas 1985, no writ).

However, it is required in some Houston courts.

E. Persuading the Judge.

It may be helpful to point out to a hesitant judge that the defendant has been uncooperative, that she hasn't responded to the discovery or didn't show up for her deposition. If other post judgment remedies have been unsuccessful, let the judge know. These are not required for obtaining turnover relief, but they might help the judge decide to sign your order.

In *Great Value Storage*, the debtor argued there was no evidence to support turnover after refusing to answer discovery. The First District would not allow the debtor to lie behind the log. "In this case, the log can provide no hiding place because permitting such an outcome would frustrate the purpose of the turnover statute." No. 01-21-00284-CV, *49 (Tex.App.—Houston [1st Dist.] April 20, 2023, no pet.) Note: there was summary judgment evidence supporting turnover relief.

Similarly, in the Fourteenth District, the debtor's uncooperative attitude was a relevant factor in determining whether the evidence supported turnover relief. *Klinek v. Luxeyard, Inc.*, No. 14-22-00547-CV, (Tex.App.—Houston [14th Dist.] July 13, 2023, no pet.) The debtor had made a lot of money from a stock pump & dump scheme and there were other credible leads to assets that could support turnover relief.

The 2005 bill analysis underlying HB 729 (§31.002 (h)) mentions as a supporting rationale for (h) that debtors are in the best position to know what assets they own and which assets are necessary to satisfy a judgment.

It may help to assure the judge that the receiver will keep any money seized in trust until either there is an order signed allowing distribution, or an agreement with the defendant.

F. Not a Harsh or Drastic Remedy

Opposing counsel may argue that the turnover receivership is a harsh or drastic remedy. This comes from case law about the other kinds of receiverships and case law from before the turnover statute was enacted in 1979. If opposing counsel provides case law, check to see what kind of receivership the opinion was about, and the date of the opinion.

If the turnover receivership is that harsh or drastic a remedy, the statute and case law would require notice to the defendant at the very least, which they don't. The cases discussing proceeding *ex parte* do not mention harsh or drastic remedy. They point out that the judgment debtor has had its day in court and should expect that collection actions will occur.

Further, the legislature amended the turnover statute in June 2017, making it much easier to prove up a receivership. Surely, they would not do that if the statute was considered a harsh or drastic remedy.

A handout on this topic is included as Appendix 14.

G. Watch Out For Hamilton Metals v. Global Metal Services, Ltd

In *Hamilton Metals v. Global Metal Services, Ltd*, the Fourteenth District (Houston) only allowed turnover of the assets which the creditor proved were owned by the debtor. No. 14-17-00670-CV, (Tex.App.—Houston [14th Dist.], August 13, 2019, pet. denied). This is opposite the intent of the statute, which is to stop the cat and mouse game where

the debtor got to hide assets and creditor could only satisfy its judgment from assets it could find. The Texas Supreme Court points out the legislative intent:

“The changes [in the turnover statute] are open-ended in that they allow a judgment creditor to get aid in collection from the Court in the form of an order which requires the debtor to bring to the Court all documents or property used to satisfy a judgment. The actual effect of the bill is to require the burden of production of property which is subject to execution to be placed with the debtor instead of a creditor attempting to satisfy his judgment.”

Beaumont Bank N.A. v. Buller, 806 S.W.2d 233, 226 (Tex. 1991). *Hamilton Metals* ignores § 31.002 (h). The opinion is clearly wrong where it holds that only assets proved by the creditor are subject to turnover.

Yancey v. SLJ Company, LLC holds the correct view: “[T]he trial court was not required to identify the property subject to the receiver’s authority.”, No. 05-21-00404-CV (Tex.App.—Dallas, December 7, 2022, no pet.).

Great Value Storage No. 01-21-00284-CV (Tex.App.—Houston [1st Dist.] April 20, 2023, no pet.) mentions *Hamilton Metals* in another context at *42, so the First District is aware of it, but it follows *Tanner v. McCarthy* at *46 as to what needs to be proved up.

So, we have *Hamilton Metals* out of the Fourteenth District on one hand and on the other hand we have both *Great Value Storage* and *Tanner* in the First District, and *Yancey* in the Fifth District.

V. TURNOVER DURING APPEAL

Filing an appeal to the judgment does not keep it from being a final order. In *In Re Bradberry*, the debtor argued that turnover was premature because the judgment was on appeal. The debtor’s application for a writ of mandamus vacating the turnover order was denied. *In re Bradberry*, No. 12-12-00162-CV (Tex.App.--Tyler, August 8, 2012, no pet.) (mem. op.).

A. Supersedeas

The turnover of an asset does not preclude the defendant from superseding the judgment during an appeal. There is no deadline for supersedeas. *Abuzaid v. Modjarrad & Associates, P.C.*, No. 05-17-00976-CV (Tex.App.—Dallas, November 14, 2017, no pet.) (Asset had been turned over to the sheriff, per the turnover order, but the sheriff had not yet sold the asset.)

VI. PROCEDURAL CONSIDERATIONS

A. Which Court?

You may bring an application in the trial court. Or, you may bring an independent proceeding in any court of appropriate jurisdiction. Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (a) & (d). If you bring an independent proceeding, bear in mind that you may be limiting the post judgment discovery you can bring against third parties. Post judgment discovery would be controlled by the original trial court. Tex. R. Civ. Proc. 621a.

If you bring an independent proceeding, plead facts that will make a prima facie case supporting venue.

Because you may seek turnover in any court of competent jurisdiction, a plaintiff may obtain turnover relief to satisfy several judgments it has against the same debtor, even though the judgments are from different courts. *Barrera v. State*, 130 S.W.3d. 253 (Tex.App.--Houston [14th Dist.] 2004, no pet.).

Sections 11.401 and 11.402 of the Business Organizations Code do not apply. These sections say that a receivership action against a domestic entity should be brought in a district court in the county where the business’ registered office or principal place of business is. But, this only applies to the winding up and termination of Texas entities. It does not apply to a trial court’s jurisdiction under § 31.002 to appoint a receiver to collect the court’s own judgment. *Remote Control Hobbies, L.L.C. v. Airborne Freight Corp.* No. 14-12-01088-CV (Tex. App.--Houston [14th Dist.] March 27, 2014, no pet.).

Do you need to give full due process if you proceed in an independent proceeding? As turnover relief may be granted *ex parte*, it makes sense that notice is not required. However, consider the original language in Tex. Rev. Civ. Stat. Ann Art. 3827a, saying the proceeding may be brought in the same suit “...or in a new and independent *suit*.” Compare that with §31.002 (d), codified in 1985, which says “... in an independent *proceeding*.” The statute codifications were meant to better organize the laws rather than to make substantive changes, so bear in mind the original language when deciding whether and how to best serve the judgment debtor. CPRC §1.001 (a) Purpose of Code.

B. No need to wait 30 days after the judgment.

The creditor does not have to wait 30 days before turnover can be granted. The court in *Childre v. Great Sw. Life Ins. Co.*, 700 S.W. 2d 284 (Tex. App.—Dallas 1985, no writ) reasoned that a turnover receivership is in the nature of an attachment, so the 30 day waiting period required by Rule 627 for a writ of execution is not required. 700 S.W.2d, at 286-87. The Court also analogizes a turnover receivership to a garnishment, where no waiting period is required. *Id.* at 287.

C. Watch Out for a Motion For New Trial

If you don't wait 30 days, watch out for a motion for new trial. The judgment fails if the court grants a new trial, making any turnover orders a nullity. *Scheel v. Alfaro*, 406 SW3d 216 (Tex. App.-San Antonio 2013, pet. denied), citing *Baca v. Hoover, Bax & Shearer*, 823 S.W.2d 734, 738-39 (Tex.App.--Houston [14th Dist.] 1992, writ denied).

D. Make Sure You Have A Final Judgment.

Turnover provisions in an interlocutory default judgment were ordered struck as an abuse of discretion. *In re Karen DeShetler*, No. 09-17-00031-CV (Tex.App.—Beaumont March 30, 2017, orig. proceeding) (mem. op.).

E. The Court's Power to Grant Turnover Does Not Time Out.

Turnover may be granted after the court has lost its plenary power. The court maintains jurisdiction to enforce its judgments, as long as the judgment is alive. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577, 581 (Tex. 2018) (per curiam); *Woody K Lesikar Special Trust v. Moon*, No. 14-10-00119-CV (Tex.App--Houston [14th Dist.] August 9, 2011, pet. denied) (mem. op.).

F. Turnover May Be Granted *Ex Parte*.

Notice to the defendant and opportunity to be heard are not required by the turnover statute. *Ross v. 3D Tower Ltd.*, 824 S.W.2d 270 (Tex. App.—Houston [14th Dist.] 1992, writ denied). *Cantu v. Seeman*, No. 01-09-00545-CV (Tex.App.—Houston [1st Dist.] May 3, 2012, pet. denied) (mem. op.). An *ex parte* turnover order does not unfairly surprise a judgment debtor because the judgment puts the debtor on notice that post-judgment collection proceedings will follow. *Ex parte Johnson*, 654 S.W.2d 415, 418 n.1 (Tex. 1983); *Thomas v. Thomas*, 917 S.W.2d 425, 433-34 (Tex. App.—Waco, 1996, no writ); *Scheel v. Alfaro*, 406 S.W.3d 216 (Tex. App.--San Antonio 2013, pet. denied); *In Re Marriage of Tyeskie*, No. 06-18-00020-CV (Tex.App.—Texarkana August 2, 2018, pet. denied) (No notice required for turnover proceeding brought under Tex. Family Code §9.02 to enforce a division of marital property.)

A good review of the constitutional issues is found in *Sivley v. Sivley and Sivley*, 972 S.W.2d 850 (Tex.App.—Tyler, 1998, no pet.):

“The question before us, however, is whether the trial court's failure to provide prior notice and a hearing before the issuance of the turnover order under Section 31.002 violated Don, Jr.'s constitutional rights to due process and trial by jury even though the turnover statute does not require it. Due process of law requires that an individual is entitled to notice and hearing before he is deprived of a property right. U.S. CONST. amend. XIV; TEX.CONST. art. I, § 19. The issue of whether post-judgment collection proceedings compromised constitutional due process principles was addressed by the Supreme Court of the United States in *Endicott--Johnson Corporation v. Encyclopedia Press*, 266 U.S. 285, 288--290, 45 S.Ct. 61, 69 L.Ed. 288 (1924). In *Endicott--Johnson*, the judgment debtor contended that a New York statute was in conflict with the constitutional due process clause because it authorized the issuance of a garnishment execution without giving notice to the judgment debtor or affording him a hearing. In holding that due process was not violated, the court reasoned as follows:

... the established rules of our system of jurisprudence do not require that a defendant who has been granted an opportunity to be heard and has had his day in court, should, after a judgment has been rendered against him, have a further notice and hearing before supplemental proceedings are taken to reach his property in satisfaction of the judgment. Thus, in the absence of a statutory requirement, it is not essential that he be given notice before the issuance of an execution against his tangible property; after the rendition of the judgment he must take "notice of what will follow," no further notice being "necessary to advance justice."

Endicott-Johnson Corporation, 45 S.Ct. at 62—63; *Sivley*, 972 S.W.2d at 860.

In 1968, the United States Supreme Court turned down the opportunity to revisit *Endicott-Johnson Corporation*, in *Hanner v. DeMarcus*, 390 U.S. 736 (1968).

1. Should You Give Notice?

On a routine collection case where you hope the receiver will find at least some money in the defendant's bank account, it probably doesn't matter whether the order is signed sooner by going *ex parte* or later, after a hearing. It is a crap shoot as to whether there will be money in the account at any given time. Some judges like the defendant to be given notice, because it gives them one more chance to come to the table.

On the other hand, by the time the collections are ripe for a receivership, the typical debtor has had plenty of opportunities to work something out. It is time to get moving. A levy on the debtor's bank account that comes as a surprise is a real game changer for the debtor who is used to the usual collection routine. They may finally take your judgment seriously.

The law favors the diligent creditor. The first to obtain turnover may well take first from the assets or work out an agreement.

If the judge is unfamiliar with turnover, or doesn't care to use it often, then you have two sales jobs. You have to both convince the judge to sign your order and to let you proceed *ex parte*. It might be better to give notice. The debtor who has already ignored everything else that you have mailed them probably isn't going to suddenly wake up upon the arrival of one more certified mail piece from an attorney.

2. Does Rule 695 apply?

The rule states, "Except where otherwise provided by statute, no receiver shall be appointed without notice to take charge of property which is fixed and immovable." The rule goes on to talk about the procedure.

Rule 695, which dates from 1943, shouldn't apply to turnover. It would be 36 years before the turnover statute would be enacted in 1979, so the drafters could not have had turnover in mind.

In *Rusk v. Rusk*, a divorce case, Rule 695 applied, but the case concerned a Ch 64 receivership. 5 S.W. 3d 299 (Tex.App.--Houston [14th Dist.] 1999, pet. denied). "The underlying authority for appointment of a receiver in the final divorce decree setting finds support from a 1960 Supreme Court case." That case was 19 years too early to be talking about a turnover receivership.

The Fourth District applied Rule 695 to a turnover receivership in 2003, in *Gore v. Scotland Golf, Inc.* No. 04-03-00143-CV Oct. 1, 2003 (pet. denied). The application for turnover did not mention real property, only that the defendant had personal property. Also, the Fourth District sounds annoyed that there was no evidence at the hearing, let alone evidence showing that defendant owned property that was not readily leviable by sending out the constable.

If the only real property your debtor owns is their homestead, Rule 695 won't be an issue. If there is non-exempt "fixed and immovable" property that you want the receiver to liquidate, it won't hurt to give notice of the hearing and avoid the question of whether the rule applies. The real property isn't going anywhere.

G. Turnover Heard Upon Submissions.

The application may be heard upon submissions. *Goodman v. Compass Bank*, 05-15-00812-CV (Tex.App--Dallas August 3, 2016, no pet.) (Citing *Tanner v. McCarthy*, 274 S.W.3d 311, (Tex.App.—Houston [1st Dist.], 2008, no pet.)). The evidence may be already in the record. *Id.*

If you are going to try to obtain turnover upon submissions, be sure that your application includes an affidavit or that the elements are already in the record. There must be evidence that satisfies the statute. See, *Paul Black, et al. v. Toby Shor and Seashore Investments Management Trust*, 443 S.W.3d 170 (Tex.App.-- Corpus Christi 2013, pet. denied).

H. No Right to a Jury on Receivership Proceedings.

Because notice to the defendant is not required, there is no right to a jury trial on whether a receiver should be appointed. *Schulze v. Cap Collection JV7*, 03-03-00390-CV (Tex.App.—Austin September 23, 2004, no pet.) (mem. op.).

The right to trial by jury does not extend to receivership proceedings. Receivership property is in the hands of the law, so its management and control rests exclusively in the court. Jury intervention would impermissibly transfer control of the receivership from the court to a jury. *Unit 82 Joint Venture v. International Commercial Bank of China*, No. 08-13-00088-CV, slip op. (Civ. App.-- El Paso, November 5, 2014, rev'd on other grounds 377 S.W.3d 694 (Tex. 2012)) (Citing several cases.) (No right to jury trial on whether property belonged to tenant or the judgment debtor in receivership.)

I. Practice Tip

Documents attached to a pleading are not evidence (and not part of the record on appeal) if they are not admitted as evidence. You still have to lay the predicate, too. Attaching a document to a pleading does not get you past having to lay the predicate. *Gerard Guerinot v. Donna Wetherell*, No. 01-12-00194-CV, (Tex.App.--Houston [1st Dist.], June 6, 2013, no pet.).

VII. USING TURNOVER AGAINST THIRD PARTIES

Turnover is a purely procedural device to aid in the collection of a creditor's judgment against the debtor. The statute does not confer jurisdiction to determine the substantive rights of the parties. It cannot be used to determine the property rights of third parties. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577 (Tex. 2018) (per curiam). (Regarding determination of an intervenor's rights to property.)

A. Property In The Hands of A Third Party

The turnover statute is not applied against someone who is not the judgment debtor. *Beaumont Bank N.A. v. Buller*, 806 S.W.2d 223, 227 (Tex. 1991). The turnover statute provides that the court may "order the judgment debtor to turn over non-exempt property..." Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (b) (1) (West 2015) (underline added.) The turnover statute is a procedural remedy not intended to alter the substantive rights of the parties. *Beaumont Bank, N.A.*, 806 S.W.2d at 230. It is enough that the judgment debtor can be held in contempt for failure to turn over property that he controls but is in the hands of a third party. *Parks v. Parker*, 957 S.W.2d 666, 668-669 (Tex.App.--Austin 1997, no pet.) (Declining to follow the line of cases at the time allowing turnover against a third party.)

B. Resolving Competing Claims to Property

In 1991, the Supreme Court said that upon proof of the necessary facts, the trial court could order the judgment debtor and others to take actions subjecting property to the satisfaction of the judgment. *Schultz v. Fifth Judicial District Court of Appeals at Dallas*, 810 S.W.2d 738 (Tex. 1991) (abrogated on other grounds). However, in 2018, the Texas Supreme Court acknowledged that *Schultz* and *Beaumont Bank* conflict with each other. The Court decides that the turnover statute does not confer jurisdiction to adjudicate the property rights of third parties, even when they intervene. *Alexander Dubose Jefferson & Townsend LLP*, at 585. The Court does not give guidance on how to resolve competing claims to property in a turnover context (at 586), but it is clear that the Court wants a separate proceeding. *Alexander Dubose Jefferson & Townsend LLP* is discussed further in section VII K 15.

C. Dale & Ross: Property Traced To The Judgment Debtor

Beaumont Bank N.A. says that once you trace property to the judgment debtor, a presumption arises that the assets are in her possession and the burden then shifts to her to account for it. The asset in *Beaumont Bank, N.A.*, was cash, which is fungible, so the Court presumed that Mrs. Buller, as administrator for the judgment debtor's estate, had the money that was traced to her. She had the burden to account for it. Just saying that she'd spent the money was not good enough. *Beaumont Bank N.A.*, 806 S.W.2d at 226. Two cases expand on that: *Dale v. Finance America Corp.*, 929 S.W.2d 495 (Tex. App.—Fort Worth 1996, writ denied) and *Ross v. National Center for Employment of the Disabled*, 170 S.W.3d 635 (Tex. App.—El Paso 2005, *reversed on other grounds*, 197 S.W.3d 795 (Tex. 2006)).

Dale v. Finance American Corp uses the presumption as the basis for turnover where the debtor has not put on any evidence. Mr. Dale was the judgment debtor. Mrs. Dale was the third party. The court ordered them to turn over documents and property, including property in trusts. The Dales did not put on evidence at the hearing, so they were unable to rebut the presumption that the property traced to Mr. Dale was in his possession and control. The creditors had showed that Mr. Dale controlled, through Mrs. Dale, trusts that had funneled over a million dollars to him and his companies. *Dale*, 929 S.W.2d at 499. Turnover against Mrs. Dale, the third party, was upheld because they did not overcome the presumption that the asset was in defendant's possession and control.

Ross v. National Center for Employment of the Disabled expands on that. Under *Ross*, if you can show that the judgment debtor owns a controlling interest in the third party, you can get turnover. 170 S.W.3d 635 (Tex. App.—El Paso 2005, *reversed on other grounds*, 197 S.W.3d 795 (Tex. 2006)) (Turnover order failed because the underlying judgment failed.)

The First District follows *Dale*, in *Schulze v. Cap Collection JV7*, No. 03-03-00390-CV (Tex. App.—Austin Sept. 23, 2004, pet. dismissed) (mem. op.), but the Third Court of Appeals (Austin) does not. *Parks v. Parker*, 957 S.W.2d 666 (Tex. App.—Austin 1997, no pet.).

How can a court make a finding that the debtor owns a piece of property in the hands of a third party without tacitly finding that the third party does not own it? It sure looks like adjudication the rights of a third party, viewed

from the other side of the coin. The Dallas Court of Appeals' answer was that the court's order placing the third party's assets into the receivership does not bind the third party. The third party can claim its superior rights to the property at the time the property is to be sold. *CRE8 International LLC v Elexis Rice*, 05-14-00377-CV (Tex.App--Dallas June 3, 2015, no pet.) (mem. op.). *CRE8* is criticized by the Supreme Court in *Alexander Dubose Jefferson & Townsend LLP*, for deciding the rights of the intervenor, but maybe the lawsuit to stop the sale is the separate proceeding the Supreme Court indicates it wants.

In 2023, tracing control of third parties to the judgment debtor did not confer jurisdiction on the trial court to order accountings or control the third parties' property in the Fifth District (Dallas). *Benavides v. White*, No. 05-21-01148-CV (Tex.App.—Dallas January 26, 2023, no pet. hist.).

In *Beaumont Bank, N.A.*, Mrs. Buller accounted for the Buller estate's assets very poorly: she said she spent it all and she could not show what most of it was spent on. The Texas Supreme Court only upheld the portion of the turnover order directed to her as administrator. The parts of the turnover order against her as an individual were reversed because, as an individual, she was a third party and it was not shown that she had any property of the debtor. Ms. Cox, in *Swate*, did not hold property of the debtor and she was not subject to the debtor's control, so turnover against her was improper. *Ex parte Swate*, 922 S.W.2d 122 (Tex. 1996). However, in *Dale*, the creditors traced control of trusts ostensibly run by Mrs. Dale to Mr. Dale, so turnover against Mrs. Dale, a third party was upheld. Mr. Dale controlled the property in Mrs. Dale's possession. But, consider these carefully with an eye on *Alexander Dubose Jefferson & Townsend LLP*.

D. Alter Ego Actions Against Third Parties

A third party cannot be treated as if it were the debtor merely because the creditor claims the third party is the debtor's alter ego. "This argument would permit [the judgment creditor] to skip the trial on the merits in this case with respect to the alter ego issue and declare itself the winner." *United Bank Metro v. Plains Overseas Group, Inc.*, 670 S.W.2d 281 (Tex. App.—Houston [1st Dist.] 1983, no writ). The creditor has to bring a new lawsuit. "We construe that the legislature's purpose in enacting the turnover statute was to facilitate the collection of assets from the judgment debtor to the judgment creditor." *Republic Ins. Co. v. Millard*, 825 S.W.2d 780, 783 (Tex.App.—Houston [14th Dist.] 1992, orig. proceeding). The statute does not allow judgment creditors and debtors to initiate and incorporate in the proceeding an entirely different lawsuit against a third party who is not part of the original judgment. (*Id.* at 783).

In *Bolloré S.A. v. Import Warehouse, Inc.*, 448 F.3d 317 (5th Cir. 2006), the trial court held a two day hearing against third parties on an alter ego theory. The creditor argued on appeal that the hearing counted as the third parties' separate trial, but the Fifth Circuit disagreed and vacated the orders. *Id.*, at 324. The third parties had been personally served with a subpoena duces tecum, but they had not been served with a summons as required by Rule 4 of the Federal Rules. The court did not have jurisdiction to alter the substantive rights of the third party without proper service of process. (*Id.*, footnote 5.)

E. Newman v. Toy

If the court orders turnover of the judgment debtor's shares in a corporation and you can prove that the judgment debtor owns all of the stock, the receiver can sell the corporation's property so long as the rights of the corporation's creditors are not prejudiced. *Newman v. Toy*, 926 S.W.2d 629 (Tex. App.—Austin 1996, writ denied). This is not piercing the corporate veil-- it is the receiver stepping into the defendant's shoes as the sole shareholder. A case following *Newman v. Toy* is *W.T.J. v. S.L.S.*, No. 03-10-00335-CV (Tex.App.-- Austin August 2012, no pet.) (mem. op.). Caution: *Newman v. Toy* and *W.T.J v. S.L.S.* are not LLC cases. See Section IX below, if the entity is a partnership, limited partnership, or an LLC.

F. How To Get Turnover Against Third Parties Without Getting Into Trouble.

Obtain an order granting a receiver the defendant's property rights, including the defendant's contract rights. The receiver makes demand upon the third party for the defendant's property or for money owed to the defendant. The order is not against the third party; it transfers to the receiver the defendant's power to demand the property. The receiver must bring an independent action against the third party if the third party will not comply. But, this follows, because the defendant itself would have to bring an independent action to recover its property from an unwilling third party.

I draw a distinction between the receiver stepping into the shoes of the debtor to demand the debtor's contract rights or property from a third party, and the court ordering turnover against the third party. The order in *Plaza Court, Ltd. v. West* didn't just order third parties to turn over property-- it actually put the third parties into receivership. 879 S.W.2d 271 (Tex. App.—Houston [14th Dist.] 1994 no pet.). No wonder the order was ruled improper.

“[The turnover statute is not] a super-venue device by which the original trial court can reach out and assume jurisdiction for trial purposes of potential lawsuits involving third parties.” *Republic Ins. Co. v. Millard*, at 783.

If the third party claims an interest in the property, the receiver or the creditor must bring a new lawsuit.

G. Consider a Garnishment

If a third party has money or personal property that you think belongs to the debtor, consider a garnishment. Garnishment can be used to determine a third party’s right to property.

J. Third Party Should Consider Not Subjecting Itself to the Court’s Jurisdiction.

Intervening subjects a third party to the court’s jurisdiction in *CRE8 International LLC v Elexis Rice*, No. 05-14-00377-CV (Tex.App--Dallas June 3, 2015, no pet.) (mem. op.). (Discussed in section VII K 14, below, but criticized by the Texas Supreme Ct. in *Alexander Dubose*, discussed below at VII K 15.)

K. Some Third Party Cases Examined More Closely

1. *Beaumont Bank N.A. v. Buller*

806 S.W.2d 223, 227 (Tex. 1991)

The judgment debtor, Mr. Buller, had died. Mrs. Buller said that she spent all of the proceeds from a \$100,000 certificate of deposit. The trial court signed a turnover order against Mrs. Buller, individually and as executrix. The Texas Supreme Court only affirmed the turnover order against Mrs. Buller in her representative capacity. Because she was not the judgment debtor, the best a court could do under the turnover statute is to have her turn over the debtor’s assets. She said she did not have any. The Supreme Court did not believe that she had spent all of the money and they placed the burden on her to account for it. But that was little help to Beaumont Bank. (The court of appeals’ opinion indicates that there was no evidence that Mrs. Buller still possessed assets of the estate by the time of the turnover hearing. Also, Mrs. Buller claimed a community interest in the funds of her deceased husband’s estate. *Buller v. Beaumont Bank, N.A.*, 777 S.W.2d 763, at 764 (Tex. App.--Beaumont 1989) (*reversed* 806 S.W.2d 233 (Tex. 1991)). As Justice Mauzy said in his dissent, the real problem was that the turnover statute is the wrong vehicle for resolving this kind of dispute. (806 S.W.2d at 229).

The burden was on Mrs. Buller to account for all of the cash, because cash is fungible. “All accounted for cash is presumed to be in the possession of the debtor; simply asserting ‘I spent it’ is unacceptable.” *Beaumont Bank.*, at 227. But to the extent that she could show that some of the money was spent, it is not in her possession or control and that portion of the money must be deducted from the total she was to turn over.

2. *Schultz v. Fifth Judicial District Court of Appeals at Dallas*

810 S.W.2d 738 (Tex. 1991) (abrogated on other grounds, *In re Sheshtawy*, 154 S.W.3d 114 (Tex. 2004) (The Court changed its mind on whether a trial court could entertain a contempt motion during an appeal.)

Schultz held the minority view that turnover could be had against non-parties “upon proof of the necessary facts”. In 2018, the Texas Supreme Court went beyond rejecting the minority view, deciding that the turnover statute, being only a procedural device, cannot be used to determine the substantive rights of the parties to the case, let alone the rights of third parties. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577 (Tex. 2018) (per curiam), discussed below.

3. *Ex parte Swate*

922 S.W.2d 122 (Tex. 1996)

Debtor’s first ex-wife won a judgment against him and had a receiver appointed. The receiver obtained an order compelling the debtor’s second ex-wife, Cox, to turn over money she had just gotten from the debtor in her divorce. She did not turn over the money and was jailed for contempt. The majority opinion granted her writ of habeas corpus, based on the contempt issues. Justice Gonzalez, concurring, said that he would have also granted the writ based on turnover issues. Looking at § 31.002 (b) (1), he writes, “Thus, it is clear that the statute authorizes turnover orders enforceable by contempt only against the judgment debtor *or to those who possess property subject to the control of the judgment debtor.*” (*Id.*, at 125, emphasis added.) Cox was not the judgment debtor or under his control, so the turnover order against her was improper. (*Id.*, at 125). The concurring opinion then looks at the case law establishing the general rule that a trial court does not have jurisdiction to order turnover from a stranger to the judgment. “A turnover order is not a substitute for established remedies allowing a creditor to reach property owned by the judgment debtor claimed to be in the possession of a stranger to the lawsuit.” (*Id.*, at 126.)

In a comment that will become important in a 2018 Texas Supreme Court turnover decision, *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577 (Tex. 2018) (per curiam), Justice Gonzalez writes:

“A turnover order is not a substitute for established remedies allowing a creditor to reach property owned by the judgment debtor claimed to be in the possession of a stranger to the lawsuit. A creditor may seek garnishment against third parties or join them in a suit against the debtor and, if successful, obtain a turnover order against the third party. However, a creditor may not seek a turnover order against third parties without other initial proceedings.”

Swate, at 126.

4. *Ross v. National Center for Employment of the Disabled*

170 S.W.3d 635 (Tex. App.—El Paso 2005, *reversed on other grounds*, 197 S.W.3d 795 (Tex. 2006)).

Ross contains a clear explanation of the law at the time, with good discussions of *Beaumont Bank, N.A.*, *Schultz, Dale*, and *Plaza Court Ltd.* *Ross* owned two corporations that had a letter of credit for \$1.2 million. *Ross* controlled the corporations; therefore, he controlled the letter of credit. *Ross* had been ordered to turnover his stock in the corporations, but he did not. The trial judge recognized that if the stock had been turned over, the judgment creditor could have exercised the letter of credit and there would be no need for the turnover relief against the corporations. *Ross*, 170 S.W.3d at 642.

The Court wrote, “Once the judgment creditor traces the assets to the judgment debtor, a presumption arises that those assets were in his possession and the burden then shifts to the judgment debtor to account for the assets.” *Id.* at 640. Applying *Plaza Court*, this presumption applies to assets held by a corporate entity as long as the trial court finds that the true judgment debtor owned at least a controlling majority of the stock. Such a finding justifies the issuance of a turnover order against assets of a non-judgment debtor. *Id.* The trial court’s order compelling the bank to turn over the proceeds from the letter of credit was affirmed. (The turnover order was later reversed, because the underlying judgment was reversed.)

5. *Cravans, Dargan & Co. v. Peyton L. Travers Co.*

770 S.W.2d 573, 576-77 (Tex. App.—Houston [1st Dist.] 1989, writ denied)

A cash bond held by a third party, the State Board of Insurance, was not under the debtor’s control, so a judgment denying turnover relief against the Board was proper. It follows that if the Board did hold property under the debtor’s control, turnover may have been granted. The opinion recognizes this, saying, “As discussed below, the turnover statute allows appellant to obtain only property within the possession or control of the judgment debtor.” (*Id.* at 575.) The debtor was an insurance agency that had not obtained errors & omissions coverage, so it was required to post a cash bond to maintain its license. The State Board of Insurance had not deposited the defendant’s cashier’s check yet, so the creditor argued that the defendant had control of the money.

6. *Bay City Plastics, Inc. v. McEntire*

106 S.W.3d 321, 325 (Tex. App.—Houston [1st Dist.] 2003, pet.denied).

The First District decides, after *Swate*, that the way the turnover statute reaches the defendant’s property in the hands of third parties is by ordering the judgment debtor to turn it over. It was proper for the trial court to determine whether the debtors owned property in the hands of the third parties.

7. *Plaza Court, Ltd. v. West*

879 S.W.2d 271 (Tex. App.—Houston [14th Dist.] 1994 no pet.)

The judgment creditors did not prove that the judgment debtors owned a controlling interest in the third party, so the turnover order was vacated. However, the court recognized that a turnover order could have been used if there was a finding that the property in the hands of the third party was subject to the possession or control of the judgment debtor (citing *Norsul Oil & Mining Ltd.*) (The presumption placing the burden on the debtor to account for the asset was not discussed in this case. The third parties put on evidence that they were owned by another entity.)

The trial court found that the judgment debtor had transferred property to two corporations (third parties) in sham transactions. The corporations were placed into receivership. The order also compelled them to turn over the defendant’s property. The Fourteenth District reversed the turnover order because there was no independent proceeding against the third parties, based on *Ex parte Swate* and *Parks v. Parker*, 957 S.W.2d 666 (Tex. App.—Austin, 1997, no pet.).

8. Norsul Oil & Mining Ltd. v. Commercial Equipment Leasing Co.

703 S.W.2d 345 (Tex. App.—San Antonio 1985, no writ)

Stock in the hands of third party was subject to a turnover order because it was owned by the judgment debtor and subject to the debtor's possession or control. "The intimate and interwoven relationship of the three judgment debtors to Norsul [the third party] was plainly established, i.e., two as directors of Norsul, one as chairman of the board of Norsul, and the company as recipient of shares of stock in exchange for acquisition by Norsul of a subsidiary company belonging to the Forsters [the judgment debtors]." 703 S.W.2d at 348.

9. Republic Ins. Co. v. Millard

825 S.W.2d 780 (Tex. App.—Houston [14th Dist.]1992, no writ)

In this case, the court required an insurance company to litigate a bad faith claim within the context of a post judgment turnover action, where the insurer was not a party to the original suit. The turnover statute was not the proper proceeding for what was essentially a new lawsuit alleging bad faith claims.

"We construe that the legislature's purpose in enacting the turnover statute was to facilitate the collection of assets from the judgment debtor to the judgment creditor." (Id., at 783). "Respondent [the trial judge], in his order, properly ordered a turnover to the Trevinos [the judgment creditors] of all causes of action Culver and Davis [the judgment debtors] might have, now or in the future, against any liability insurance carriers, specifically including Republic [the third party]. Clearly respondent had the authority to enter such an order under the turnover statute. However, he did not have the authority under the turnover statute to assume jurisdiction over Republic in this turnover action and order a consolidation and trial of the bad faith claims against it in his court." (Id., at 784).

10. Burns v. Miller, Hiersche, Martens & Hayward, P.C.

948 S.W.2d 317 (Civ. App.—Dallas, 1997, writ denied)

The turnover order compelled the judgment debtor to write to the trustees of spendthrift trusts directing them to make future distributions to the receiver. The trial court had jurisdiction to direct the debtor to write the letters, but the letters were not binding on the trustees.

The Dallas court recognized the exception, but found there was no evidence that the defendant had control of the property held by third parties (the corpus of a spendthrift trust and money paid by the trustees to other third parties for the debtor's benefit). Also, the property was proceeds of exempt property, and, therefore, exempt.

11. International Paper v. Garza

872 S.W.2d 18 (Tex. App.—Corpus Christi, 1994, no writ)

The judgment debtor had transferred an asset to International Paper Company (IPC). The judgment creditor joined IPC in a turnover proceeding, based on a fraudulent conveyance. IPC answered and specially excepted to the pleadings because they were a third party and the turnover statute is limited to property within the ownership, possession, or control of the judgment debtor. The trial court denied the special exceptions and IPC sought a writ of mandamus.

The Corpus Christi Court of Appeals recognized that turnover may be used to recover the judgment debtor's property. Mandamus was denied because IPC would have the right to appeal a turnover order issued against them.

In a footnote, the Court writes, "We disagree with *Republic Insurance Co. v. Millard*, 825 SW2d 780, 782 (Tex.App.—Houston [14th Dist.] 1992, orig. proceeding), to the extent that it suggests that mandamus is an appropriate remedy to review the trial court's inclusion of a third party to the underlying judgment as a party defendant for the first time in a post-judgment turnover proceeding. Clearly, under the rationale of *Schultz*, the third party has an adequate remedy by appeal." (*International Paper*, at 19).

12. In re Catherine Karlseng

No. 05-14-00049-CV (Tex. App.—Dallas Feb. 12, 2014, orig. proceeding).

The judgment was against Catherine Karlseng's husband, Robert. Robert, a name partner at a law firm, claimed to be only an employee of his firm. Catherine was set up as an employee of the law firm, but the judgment creditor sought to establish that she did not actually work there and that her salary was really Robert's business income as an independent contractor. Robert's judgment creditor obtained an order against Catherine to turn over "all income and other amounts derived by Catherin Karlseng, directly or indirectly, from Defendant's work as a lawyer and his law firm" and to turn over other assets related to that income. Catherine was not a party to the lawsuit against Robert. Her writ of mandamus was granted. "A judgment may be enforced against a non-party to the judgment only by bringing a separate suit alleging a basis for enforcing the judgment against that party." (citations omitted.) The trial court could

not order her to turn over property in which she claimed an ownership interest without conducting proceedings in which she is a party and afforded an opportunity to assert her claim to the property.

13. *In Re Old American County Mutual Fire Insurance Company*

No. 13-14-00231-CV (Tex. App.-- Corpus Christi Sept 25, 2014, orig. proceeding).

In Re Old American provides a summary of the law regarding using turnover against third parties. The opinion cites numerous cases that would be a good starting point for research. The opinion recognizes a split in opinions as to whether turnover can be used to reach the debtor's property in the hands of a third party, but does not explore the ramifications, because the parties did not raise the issue. *Id.*, footnote 4.

Rosales was injured in a car crash with Mr. and Mrs. Moreno. Twenty months after the default judgment, Rosales obtained a turnover order assigning the Moreno's potential claim against their insurance company, Old American County Mutual Fire Insurance Company, to Rosales. Rosales served Old American with proper process and, later, a motion for summary judgment. However, instead of bringing a new lawsuit, the pleadings were brought within the context of the turnover proceeding. Old American brought a writ of mandamus. Rosales argued that although the trial court had lost its plenary power, it retained the power to enforce its judgments. Rosales characterized the proceeding against Old American as part of the trial court's efforts to enforce its judgment against the insured, and argued that Texas law favors the liberal joinder of claims. Old American argued that you cannot use turnover to determine the substantive rights of third parties. The Thirteenth District granted mandamus, instructing the trial court to withdraw its order denying Old American's plea to the jurisdiction and to enter an order dismissing Rosales's claims against Old American.

The important holdings of the opinion are (citations omitted):

The turnover statute may not be used to determine substantive rights of third parties. (But, they did not reach the issue of whether turnover may be used when the third party holds the debtor's non-exempt property.)

The turnover statute does not create a right in the judgment creditors and debtors to initiate and incorporate in the turnover proceedings an entirely different lawsuit against a third party who is not a part of the original judgment.

A judgment may be enforced against a non-party to the judgment only by bringing a separate suit alleging a basis for enforcing the judgment against that party.

Also, the case serves as a general reminder that a post judgment order cannot be inconsistent with the original judgment require performance of obligations in addition to the obligations imposed by the final judgment. "This is particularly true when such orders purport to adjudicate the rights of non-parties."

14. *CRE8 International LLC v Elexis Rice*

No. 05-14-00377-CV (Tex.App--Dallas June 3, 2015, no pet.)(mem. op.).

Rice obtained an agreed judgment against Pliant, a guarantor on a debt. Rice sought turnover against Pliant of several domain names, email addresses and a telephone number. Pliant did not respond, but third party CRE8 International intervened. CRE8's attorney appeared and participated in the hearing. At the end of the hearing, the trial judge had a writ of execution issued and ordered the domain names, telephone number and email addresses to be auctioned.

Cre8 appealed, saying that turnover cannot be used to determine the property rights of third parties, and that turnover is a procedural device not to be used against third parties.

However, turnover may be used to determine the debtor's property. There was evidence that Pliant owned or controlled the domain names. He was the listed on the domain records under the fields for Registrant, Admin, and Tech. There were documents showing that the email addresses and telephone numbers were his. It was not an abuse of discretion for the trial court to determine that Pliant owned the properties, except the court of appeals reversed as to one of the telephone numbers.

Unfortunately for Cre8, intervening was a bad idea. The opinion acknowledges that a finding that the property belonged to Pliant would not ordinarily bind Cre8. The opinion goes on to say, "Cre8 could have sat on the sidelines and later attacked the sale by proving superior rights had Rice won, but it chose to forgo that step and to inject itself into the matter. Cre8 having done so cannot now complain that the trial court ruled against it on the ownership issue."

A domain name is not exempt. It is not one of the types of exempt property listed in §42.002 of the Texas Property Code. It is not a tool, piece of equipment, book or apparatus used in a trade or profession under §42.002(a)(4). *Restrepo and Restrepo v. Alliance Riggers & Constructors, Ltd* (Tex.App.--El Paso September 22, 2017, no pet.).

CRE8 is criticized in *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577 (Tex. 2018). *Alexander Dubose* points out that the *CRE8* opinion does not cite any authority supporting the idea that intervening gave the court authority to determine the substantive rights of a third parties. Further, the court said

“And the turnover statute has no provision conferring authority on trial courts to decide the substantive rights of the parties properly before it in a turnover proceeding, let alone the rights of strangers to the underlying judgment. The opinion does not explain how a third party’s consent via a plea in intervention suddenly confers such authority.”

15. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*
540 S.W.3d 577 (Tex. 2018)(per curiam).

The Texas Supreme Court examines “the finality of an order that affected a non-judgment debtor’s rights.” The decision discusses when a turnover order is a final order that confers appellate jurisdiction, and also the trial court’s jurisdiction to decide the property rights of an intervening third party. The Court criticizes *CRE8 International LLC v Elexis Rice*, which allows the trial court to determine the substantive rights of a third party, and remands the matter back to the Ninth District for analysis on the merits.

Background. CPChem won a large award for attorney fees from Kingwood, and requested turnover relief. Kingwood had been paid on its sanctions award against another party in the same litigation, after successfully defending an appeal. Kingwood’s law firm on the appeal, Alexander Dubose, intervenes in the turnover proceeding, claiming half of the money under its contract with Kingwood. They argue that turnover of their half of Kingwood’s sanctions award to Kingwood’s judgment creditor, CPChem, is improper.

The trial court denied CPChem’s motion to strike the intervention and Alexander Dubose’s plea. It grants turnover relief against Kingwood, ordering half of the sanctions money be paid to CPChem and the other half deposited into the registry of the court, to be released after all appeals have been exhausted. Alexander Dubose did not appeal the turnover order.

Nearly six months later, CPChem asks for a ruling on the intervention and files a motion to have the registry funds released to it, because there was no appeal. The trial court signs an “Order And Final Judgment on Pending Matters”. The Order and Final Judgment denied Alexander Dubose’s motion to release the registry funds to them and ordered the funds released to CPChem, and declared it was a final, appealable judgment. Alexander Dubose appeals.

The court of appeals found that the turnover order was a final judgment. It reasoned that the trial court had intended that the money go to CPChem, but only put the money subject to Alexander Dubose’s claim into the court’s registry so it would earn interest during the appeals process. As there was no appeal, the turnover order was final. The court of appeals said that it was not an abuse of discretion to determine the intervenor’s substantive rights, citing *CRE8*.

Examining the record, the Supreme Court finds that the trial court did not intend its turnover order to be a final, appealable order. Further, the turnover order did not dispose of Alexander Dubose’s intervention or decide ownership of the funds.

In an important comment, the Court writes, “And it is worth noting that there was never a separate, initial proceeding adjudicating [Alexander Dubose]’s claims.” This is a reference to Justice Gonzalez’s concurring opinion in *Ex Parte Swate*, where a third party was incorrectly held in contempt for not complying with a turnover order. The initial proceeding contemplated by J. Gonzalez would be a garnishment or a new lawsuit. 922 S.W.2d 122, at 126 (Tex. 1996). (*Swate* is discussed at VI K 3.) It is also a reference to *In re Karen DeShetler*, which says that a judgment can only be enforced against a non-party by bringing a separate lawsuit (discussed below in this section).

Because the statute is purely a procedural device, courts are precluded from determining the substantive rights of the parties before it, it “defies logic” to hold that the court can determine the substantive rights of strangers to the lawsuit.

The *CRE8* opinion (discussed at VI K 14) is criticized for conferring authority on the trial court to determine the rights of the intervenor in a turnover context, considering the turnover statute does not confer the jurisdiction to determine the substantive rights of the parties to the lawsuit.

The opinion acknowledges that the Court issued two conflicting opinions in 1991 (*Beaumont Bank N.A. v. Buller and Schultz v. Fifth Judicial District Court of Appeals at Dallas*) which have confused the courts as to how to resolve competing substantive claims and the extent to which a turnover order can affect the rights of non-judgment debtors. However, the Court decides it doesn’t need to set the proper mechanism for doing so in this case.

Finality of the Turnover Order. Portions of an order can be injunctive in nature (thus, final and appealable) while others are not. The portion of the order directing Kingwood to turn over the undisputed 50% of the money was a mandatory injunction. Most courts deem an order to deposit funds into the registry of the court as interlocutory. The

trial court ordered the other half of the money deposited into the registry pending a determination. Therefore, it was not an appealable final judgment that Alexander Dubose could have appealed. The later order was the first determination of competing substantive ownership rights and was the final, appealable judgment. Alexander Dubose's appeal was timely.

Van Dyke v. Littlemill Limited, Prosperity Settlement Funding, Inc. 579 S.W.3d (Tex.App.—Houston [14th Dist.] 2019, no pet.) contains a good review of *Alexander Dubose Jefferson & Townsend, LLP*.

16. *In re Karen DeShetler*

No. 09-17-00031-CV (Tex.App.—Beaumont March 30, 2017, orig. proceeding)(mem. op.).

The Sponsors sued Lawrence deShetler, Merrill Lynch and several others to recover funds misappropriated by deShetler. The funds were in a Merrill Lynch account purportedly owned by a company of deShetler's. The trial court entered a default judgment against deShetler. The default judgment ordered Merrill Lynch turn over the contents of the account, up to the judgment amount. Karen deShetler intervened after the order was signed. The account was her ERISA account pursuant to a QDRO order from her divorce. The account had been set up for her and Lawrence well before the Sponsors had ever given Lawrence their money. Karen argued that the default judgment divested her of her money; that she did not have notice of the matter until after the default judgment had been entered; she was not a party to the lawsuit or given an opportunity to be heard. The Ninth District held that turnover was improper because the default judgment was interlocutory and because it adjudicated the property rights of a non-party.

“A judgment may be enforced against a non-party to the judgment only by bringing a separate lawsuit alleging a basis for enforcing the judgment against that party. As a result, the trial court could not order Merrill Lynch to turn over property in which Karen claims an ownership interest without conducting proceedings to which Karen was a party and afforded the opportunity to assert her claim to that property.” (citations omitted).

When the Texas Supreme Court talks about the necessity of “separate proceedings” in *Alexander Dubose* to protect the due process rights of a third party, it is referring back to this opinion. Thus, “separate proceedings” in *Alexander Dubose* means a separate lawsuit.

VIII. USING TURNOVER TO REACH PROPERTY OUTSIDE OF TEXAS

A court may compel the defendant to turn over property located outside of Texas. In *Reeves v. Fed. Sav. & Loan Ins. Corp.*, 732 S.W.2d 380 (Tex. App.—Dallas 1987, no writ), Reeves had been ordered to turn over certain real property located in Portugal, along with all indicia of ownership. Although the receiver might have to go to great lengths to actually convey title of land in Portugal to a buyer, an order to turn over the property was held to be proper. Although the trial court had not ordered Reeves to convey the property, it could have. “The Supreme Court of Texas has expressly stated that ‘a court of equity having jurisdiction over [a] person may compel him to make [a] conveyance [of realty], although the land is in another State.’” *Reeves*, 732 S.W. 2d at 382 (citing *Tex. & Pac. Ry. Co. v. Gay*, 86 Tex. 571, 590 (1894)); *See, also, Lozano v. Lozano*, 975 S.W.2d 63 (Tex. App.—Houston [14th Dist.] 1998, pet. denied).

The court's authority over property located outside of Texas is its *in personam* jurisdiction to compel the judgment debtor to turn over indicia of ownership of property outside of the state or be held in contempt.

Although not an *in rem* proceeding, it is expected that the courts of the situs would recognize such an order as a final determination of a personal obligation to convey, analogous to that arising from a valid contract. *McElreath v. McElreath*, 345 SW.2d 722, 727 (Tex. 1961). Therefore, after moving through the local requirements to prove up and enforce the turnover order, a receiver should be able to obtain an order in that jurisdiction enabling the sale of the property.

IX. CHARGING ORDERS-- SEIZING A PARTNERSHIP OR LLC INTEREST

A charging order is the exclusive remedy by which a judgment creditor of a partner may satisfy a judgment out of the judgment debtor's partnership interest. This applies to general partnerships Tex. Bus. Orgs. Code Ann §152.308; to limited partnerships § 153.256; and to limited liability companies § 101.112.

In *Scheel v. Alfaro*, 406 SW3d 216 (Tex. App.--San Antonio 2013, pet. denied), sanctions were upheld against a plaintiff's counsel who had the judgment debtor's interest in several LLC's sold by a receiver, without a charging order. The sale was reversed, but for other reasons than the charging order statute.

The charging order constitutes a non-foreclosable lien on the debtor's interest. Tex. Bus. Orgs. Code Ann; § 152.308 (general partnership); 153.256 (limited partnership); and § 101.112 (LLC).

Once a distribution has been paid to the defendant, it becomes the defendant's property, subject to turnover. *Stanley v. Reef Sec., Inc.*, 314 S.W.3d 659 (Tex.App.—Dallas 2010, no pet.); *Henderson v. Chrisman*, 05-14-01507-CV (Tex.App.—Dallas April 27, 2016, no pet.). These two opinions say that in these situations the charging order is not the exclusive remedy of a creditor, but I think that is an inaccurate description of the situation. Once the distribution money is in the possession of the debtor, it is simply property owned by the debtor. At that point, it isn't a charging order situation anymore.

The charging order itself does not have to be had in a separate proceeding against the LLC / partnership. The LLC / partnership doesn't have an interest, because the distribution isn't their money. So, you don't have to bring a new proceeding against the entity. You can do it as part of post-judgment proceedings in the trial court.

A. A Narrow Exception To The Charging Order Statutes

The purpose of charging order statutes is to protect the business from disruption by the creditors of one of the members. Therefore, in some states, the charging order statutes do not apply to a single member LLC. *In re Albright*, 291 B.R. 538 (Bankr. D. Colo. 2003); *Olmstead v. F.T.C.*, 44 So. 3d 76 (Fla. 2010).

However, Texas adheres to a strict interpretation of its statute. The single member LLC argument failed in *Pajooch and U.S. Capital Investments LLC v Royal West Investments LLC, Series E*, 518 S.W.3d 557 (Tex.App.—Houston [1st Dist.], 2017, no pet.). The First District followed the language of the Texas statute, which says that a charging order is the exclusive remedy of creditors. The Florida and Colorado statutes do not have the "exclusive remedy" language.

However, there is a 2017 case out of Fort Worth that offers a narrow exception to the charging order statutes. In *Heckert v. Heckert*, the Second District upheld the turnover of assets contained in Mr. Heckert's limited partnership and in his LLC because the entities did not do any business. The point of the charging order statute is to keep business operations from being upset. Heckert's entities did nothing but hold assets (stock) that Mr. Heckert was awarded in his divorce. The opinion does mention, almost as an aside, that these were single member entities, but that wasn't the basis of the decision. No. 02-16-00213-CV (Tex.App.—Fort Worth November 9, 2017, no pet.)

A turnover receivership may be used to monitor partnership distributions and effectuate a charging order. *Pajooch*, at 567.

X. TURNOVER AGAINST A PROBATE ADMINISTRATOR

When a judgment debtor dies, the judgment ceases to have the force of a judgment and becomes merely another claim in the decedent's estate. A judgment against the decedent will not support turnover relief against the administrator because turnover will only issue against the judgment debtor. *First Financial Resolution Enterprises, Inc. v. Moore*, No. 05-04-01671-CV, 2006 WL 540326 (Tex. App.—Dallas March 7, 2006, no. pet.) (mem. op.).

XI. CHALLENGING THE TURNOVER ORDER

A. Affirmative Defenses

The defendant must plead an affirmative defense, such as payment. *Matrix, Inc. v. Provident American Insurance Co.* 658 S.W.2d 665 (Tex.App.—Dallas, 1983, no pet.)

B. An order with errors

A turnover order that is contrary to statute or contains errors is only voidable, not void. It must be attacked directly. *In re Wiese*, 1 S.W.3d 246 (Tex. App.—Corpus Christi 1999, orig. proceeding); *In re Great Northern Energy, Inc.*, 493 S.W.3d (Tex.App.—Texarkana 2016, orig. proceeding).

C. Finality of Orders

In order to confer appellate jurisdiction, an order must be final and appealed timely. However, finality in the context of a turnover order is not the same as with a judgment. Portions of the order might be injunctive, while other portions are not. The parts that are in the nature of an injunction are appealable final orders. The other parts would not be reviewable by appeal. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577 (Tex. 2018)(per curiam).

If a portion of a turnover order does not impose a mandatory injunction on the debtor, that part of the order is interlocutory and the trial court maintains jurisdiction over the issue. *Bahar v. Lyon Financial Services, Inc.*, 330 S.W.3d 379 (Tex. App.—Austin 2010, pet. denied).

Examples:

1. An order to deliver personal property to an opposing party is in the nature of a mandatory injunction. *Whatley v. King*, 249 S.W.2d 57, 58 (Tex. 1952).
2. An order directing a party to deposit funds into the court's registry pending final adjudication is usually seen as interlocutory, because it merely protects the funds until there is an adjudication of substantive rights. *See, Zhao v. XO Energy LLC*, 493 S.W.3d 725, 735 (Tex.App.--Houston [1st Dist.] 2016, no pet.); *see also Diana Rivera & Assocs., P.C. v. Calvillo*, 986 S.W.2d 795, 796 (Tex.App.--Corpus Christi 1999, pet. denied); *cf Pilot Engineering Co. v. Robinson*, 470 S.W.2d 311, 312 (Tex.Civ.App.-- Waco 1971, no writ) (an order to place cashier's checks into the registry was seen as a mandatory injunction.)
3. An order that set out the receiver's powers but did not direct the defendant to do anything is not final / appealable. *Fischer v. Ramsey, No. 01-14-00743-CV*, (Tex. App. Houston [1st Dist.] January 7, 2016, no writ)(mem. op.); *Bahar v. Lyon Financial Services, Inc.*, 330 S.W.3d 379 (Tex. App.—Austin 2010, pet. denied).
4. Portions of a post-judgment orders regarding discovery disputes are not appealable. They are only reviewable only through mandamus. *Bahar*, at 388.
5. A post-judgment award of monetary sanctions is an appealable, final judgment when the sanctions are reduced to a judgment and execution is authorized. *Bahar*. at 388.
6. The part of an order compelling a party to put money into the registry was interlocutory, but the requirement that the party also post a surety bond payable to the court was final / appealable because it required the party to take affirmative action to secure performance of the court-imposed obligation to make the deposit. *Prodeco Exploration, Inc. v. Ware*, 684 S.W.2d, 199, 201 (Tex. App.—Houston [1st Dist.] 1984, no writ).
7. There is no appellate jurisdiction over an order substituting a successor receiver. *Bozé v. Cartwright, No. 01-19-00892-CV*, (Tex. App. Houston [1st Dist.] December 31, 2020, no pet.).
8. A post-turnover order that is the first determination of competing substantive ownership rights is appealable. *Alexander Dubose*, 540 S.W.3d at 588.
9. The portion of a turnover order that resolved property rights and imposed obligations on a third party was appealable. *Transcontinental Realty Investors, Inc. v. Orix Capital Markets, LLC*, 353 S.W.3d 241, at 846 (Tex.App—Dallas 2015, no pet.)

D. Power To Enforce Its Orders

As long as the judgment is alive, the court's jurisdiction to enforce its order lasts until the judgment is satisfied. The trial court could sign multiple orders on various issues, over a period of years. The new parts of an amended turnover order that are in the nature of a mandatory injunction are appealable, even when the time to appeal the old portions of the order has expired. *See, Bahar*.

E. Amended Orders

Like with pre-judgment orders, an amended turnover order generally supersedes and nullifies the order it amends. Each subsequent amended order being appealable, objectionable parts remain subject to review as long as the amended order is timely appealed. *In Re Estate of William L. Hastings, No. 07-16-00065-CV* (Civ.App.--Amarillo March 23, 2017, no pet.)

F. Facts Are Presumed

If the trial court does not make findings of fact, all questions of fact are presumed found in support of the turnover order. *Schultz v. Cadle Co.*, 825 S.W.2d 151, at 153 (Tex. App—Dallas 1992, writ denied).

G. Burden To Bring Record

The burden is on the appellant to bring forth a sufficient record to demonstrate error. Without the record, the appellate court must assume that the omitted documents would have supported the trial court's decision. *Cortez v. Mann Bracken, LLP, No. 03-09-00615-CV* (Tex.App.-- Austin September 22, 2011 no pet.) (mem. op.).

Yet, in case after case we see turnover orders reversed because the record did not show that the elements were proven. Many appellate opinions focus on the turnover hearing, and may not go back any further. If your order is appealed, be sure your evidence proving the elements, perhaps introduced at the trial rather than at a turnover hearing, is made part of the record on appeal. One strategy is to simply hold another turnover hearing and introduce the evidence on the record. Get a fresh order.

For a restricted appeal, the error must be apparent from the face of the record. *Robison v. Watson, No. 04-20-00138-CV* (Tex.App. — San Antonio May 26, 2021)(mem. op.).

H. Timelines

Use the appellate timetable for final judgments. *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 909 S.W.2d 505, 506 (Tex. 1995).

The timeline to file a request for a de novo hearing before the referring judge on an associate judge's turnover order runs from when the order is filed. A party has seven working days from when it receives notice of the substance of the associate judge's decision. Typically, the parties have notice of the associate judge's decision when it is announced from the bench. However, a receivership order contains so many factors that a party really doesn't have notice of the substance until it can read the order. *Law Office of Joseph Onwuteaka, P.C. v. Serna*, 14-18-01063-CV (Civ.App.—Houston [14th Dist.] July 16, 2020, pet. denied).

XII. THIRD PARTY CLAIMS UNDER DTPA AND INTERVENTION BY THIRD PARTIES.

A. The DTPA §17.59 (c) does not apply.

Tex. Business & Commerce Code Subchapter E, entitled, Post Judgment Relief, says that a court may take any action necessary to efficiently operate a receivership to in order to accomplish the purpose of collecting judgments. Tex. Business & Commerce Code §17.59 (c). The use of the plural "judgments" raises the question of whether the Texas DTPA authorizes a court to bring other judgments into a turnover receivership, allowing other judgment creditors to share the recovery from the receivership.

Although the DTPA is providing for a post judgment receiver to collect judgments, it cannot mean a turnover receivership. The point is to provide relief to the several consumers who have won judgments against a defendant to a DTPA action.

Subsection (b) provides that the court shall appoint a receiver over the defendant's business. Subsection (c) says the order should state whether the receiver will have the general power to manage and operate the business, or only to manage the business's finances. By contrast, a turnover receiver is appointed to seize and sell assets. CPRC § 31.002 (b)(3).

The DTPA receivership elements are different. B&CC §17.59 (a). They almost certainly would not have been proved up at the turnover hearing in a typical collection case, so it wouldn't make sense to allow another judgment creditor to bootstrap its way into the first one's proceeding.

Section 17.59 was enacted in 1973 and amended in 1977, before the predecessor to the turnover statute was enacted in 1979, so it could not have been meant to apply.

Reasoning that the DTPA allows non-party creditors to come into a typical collection case to share in the original creditor's recovery is taking a convenient bit of statute out of context. The DTPA receivership is provided so that the victims of a deceptive actor can find relief.

B. Intervention

Intervention is normally not allowed post-judgment. "It should be noted that post-judgment receivers should be appointed to collect *only* a specified judgment(s) as set out in the post-judgment motion. They should not be appointed to collect for other, nonparty creditors or to collect claims of the judgment creditor which have not been reduced to judgment." (emphasis in original) David Hittner, 45 Tex. Bar J. 417, at 421.

However, a third party with an interest in property that is subject to turnover may intervene to protect his interest. *M&E Endeavours LLC v Air Voice Wireless LLC*, Nos. 01-18099852-CV, 01-19-00180-CV (Tex. App.—Houston [1st Dist] August 27, 2020, no pet.); *Breazeale v. Casteel*, 4 S.W.3d 434 (Tex. App.-- Austin 1999, pet. denied); *In Re Abira Medical Laboratories, LLC d/b/a Genesis Diagnostics*, No. 14-17-00841-CV (Tex.App--Houston [14th Dist.] February 22, 2018, pet. denied.)

The Fourteenth District makes an interesting decision as to subject matter jurisdiction in *Abira*. The trial court, a county court at law, had granted the post judgment pleas in intervention for two other judgment creditors. The Fourteenth looked to the intervenors' petitions in their own cases, which both pleaded claims exceeding the trial court's \$200,000 limit, in deciding the trial court did not have subject matter jurisdiction to hear the interventions. *Id.*

Use caution, because intervening and participating in the hearing subjects the third party to the court's jurisdiction under *CRE8 International LLC v Elexis Rice*. The intervenor may be stuck with an adverse ruling. 05-14-00377-CV (Tex.App--Dallas June 3, 2015, no pet.)(mem. op.).

However, *Cre8* is criticized by the Texas Supreme Court, which said that the turnover statute has no provision giving trial courts the right to decide the substantive rights of the parties properly before it, much less of an intervenor / third party. *CRE8* doesn't explain how the court would get that authority in an intervention. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577, 585 (Tex. 2018)(per curiam).

CRE8 International is discussed at section VII K 14, above. *Alexander Dubose* is discussed at section VII K 15, above.

PRACTICE TIP: Talk to the current receiver about serving your case as next case in line. See, Section XXIV Serial Receiverships.

C. Defending Against Sale of a Third Party's Property

In *Cre8 International*, a third party claiming an interest in property that the receiver wanted to sell intervened, subjecting itself to the jurisdiction of the trial court. The Fifth District said, “Cre8 could have sat on the sidelines and later attacked the sale by proving superior rights had [the judgment creditor] won, but it chose to forego that step and to inject itself into the matter. Cre8 having done so cannot now complain that the trial court ruled against it on the ownership issue.” *CRE8 International* is discussed at section VII K 14, above.

Along the same lines in the Sixth District, a judgment debtor had transferred his interest in an LLC to a trust. The trustee appeared at the hearing on the receiver's motion to sell, both arguing that the court did not have jurisdiction and seeking relief. This was held to be a general appearance so the trust was bound by the trial court's decision approving the motion to sell. *Antolik and SGN Investment Trust v. Antolik*, 06-20-00082-CV (Tex.App.—Texarkana May 7, 2021, pet. denied).

Considering *Cre8 International* and *Antolik*, the best course may be to not intervene or appear at a hearing on a receiver's motion for authority to sell property, but to wait until the receiver's motion is granted and prove up the third party's ownership of the asset in an attack on the sale before it happens.

Be sure to attack the sale before it happens. In *Antolik* the appeal was dismissed as moot because the sale had already been consummated.

The Texas Supreme Court criticized *Cre8* on the idea that a third party's substantive rights can be adjudicated in a turnover proceeding. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577 (Tex. 2018)(per curiam) (Discussed above at section VII K 15.) Presumably, it would have similarly criticized the issue in *Antolik* if it had granted the petition for review.

XIII. THE TURNOVER ORDER FAILS IF THE UNDERLYING JUDGMENT FAILS

There must be a valid, final judgment to support turnover relief. The default judgment against Ross, in *Ross v. National Center for Employment of the Disabled*, 170 S.W.3d 635, 639 (Tex. App.—El Paso 2005) was reversed due to bad service. 197 S.W.3d 795 (Tex. 2006). Therefore, the order compelling Ross to turn over the letter of credit was also reversed, in opinion no. 05-0534, 08/31/06 (citing *Matthiessen v. Schaefer*, 915, S.W.2d 479, 480 “If the underlying judgment is reversed on appeal, then the turnover order must be reversed also.” (Tex. 1995)); *Enis v. Smith* 883 S.W.2d 662 (Tex. 1994) (Nevada court vacated its judgment more than 30 days before the Texas trial court issued a turnover order on the domesticated judgment.)

XIV. THE TURNOVER RECEIVERSHIP

A. The Nature of the Turnover Receivership.

The turnover receiver is appointed “with the authority to *take possession of* the non-exempt property, *sell it*, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.” § 31.002 (b) (3) (emphasis added). This is a liquidation receivership, so to speak, not a receivership to preserve property.

B. The Receivership Order Can Last Indefinitely.

The court can exercise its inherent power to enforce its judgments until the judgment is satisfied. *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577, 581 (Tex. 2018)(per curiam); *Bahar v. Lyon Financial Services, Inc.*, 330 S.W.3d 379, 387 (Tex. App.—Austin 2010, pet. denied). It follows that the receivership order does not “time out” as long as the judgment remains alive and unsatisfied.

C. The Authority of the Receivership.

The defendant's non-exempt property comes into the constructive possession of the court in which the receivership is pending. *First Southern Properties. v. Vallone*, 533 S.W.2d 339 (Tex. 1976). The property comes into the receivership as of the signing of the receivership order. Any unauthorized transfers of property made after the order is signed are not merely voidable, they are *void*. Title does not transfer. *Id.* at 341.

In *First Southern Properties*, the court declared an ordinary foreclosure of real property void. The receivership order had been signed prior to the sale, but the receiver had not filed a *lis pendens*. “No one has the authority, even

under a prior deed of trust or execution, to sell property held *in custodia legis* by a duly appointed receiver, unless the sale is authorized by the court in which the receivership is pending.” *Id.* In addressing the lis pendens issue, the court said,

We do not believe that Articles 6640-6642 [requiring lis pendens notice] had the intent or effect of ousting courts of their exclusive custody and jurisdiction of receivership property, or of creating innocent purchasers of such property without court approval, when the receiver does not file an Article 6640 lis pendens notice. A receiver has been said to be an arm or instrumentality of the court, holding possession of property for the court which appointed him.

Id. at 343.

Therefore, notwithstanding the lack of notice to third parties, under *First Southern Properties v. Vallone*, once the order is signed, the defendant’s non-exempt property is *in custodia legis*. Any transfer without the approval of the court or the receiver is void.

First Southern Properties, Inc. pre-dates the Turnover Statute. In 2011, the case was followed within the context of a turnover receivership, in *Pratt v. Amrex, Inc.*, 354 S.W.3d 502 (Tex. App.-- San Antonio 2011, pet. denied). Like in *First Southern Properties*, there was a foreclosure sale and the buyer was a bona fide purchaser who did not have notice of the receivership. The substitute trustee’s deed was held to be void as a matter of law, because the receivership court had not given permission for the sale.

Any conveyance of property in the custody of a receiver without approval by the court has no effect upon the receivership and the accomplishment of its purposes. *T H Neel v. W L Fuller*, 557 SW2d 73, 76 (Tex. 1977). In this case, the property owner in receivership sold property. In *First Southern Properties*, an outside party tried to do a sale of receivership property.

In *Huffmeyer v. Mann*, 49 S.W.3d 554 (Tex.App.—Corpus Christi, 2001, no pet.), the joint owner of an airplane sold it to his son after the court took whether to appoint a receiver under advisement, but before the receivership order was signed. The airplane was in the hands of the court as of the time the court took the matter under advisement, so the father did not have the power to sell it.

1. *Custodia Legis* does not transfer title. The receiver has no vested title in the property at issue. Transferring money from the custody of the court to the receiver did not change the interests or priorities of any of the parties. *Dallas Bank & Trust Co. v. Thompson*, 87 S.W.2d 307 (Tex.Civ.App.—Dallas 1935)

It is not a question of whether the receiver has title, but whether the court has the power to pass title. *Farm & Home Savings & Loan Ass’n v. Breeding*, 115 S.W.2d 615, 616 (Tex. 1938).

D. Competing Claims

A receivership does not destroy a third party’s liens or other rights. But they do have to come before the court to enforce their lien. *First Southern Properties. v. Vallone*, 533 S.W.2d 339, 343 (Tex. 1976). And, a court may suspend enforcement of the lien. In *Texas American Bank/West Side v. G.O. Haven*, it was not an abuse of discretion for a divorce court to enjoin the bank from foreclosing. This gave the receiver time to sell the real property. However, the party who had obtained the injunction had to post a bond and make payments to the bank until the property was sold or the injunction had expired. 728 S.W. 2d 102 (Tex. App—Fort Worth, 1987, writ dism’d).

If another creditor garnishes the defendant’s bank account during the receivership, the receiver can direct the bank to pay the proceeds to the receiver, instead of to the garnishing creditor. As of the date of the order, all of the defendant’s non-exempt property described in the order flowed into the receivership.

E. Chapter 64 Does Not Apply To Turnover Receivership

CPRC Chapter 64 does not apply to a turnover receivership. *Flooring Systems, Inc. v. Chow*, Civil Action 4:12-CV-475 No. 08-40182 (E.D. Texas 2013)(Affirmed 765 F.3d 518 (5th Cir. 2014)); *In Re Primera Energy, LLC*, Bankr. Court, WD Texas 2018 (Case No. 15-51396-CAG, Adversary No. 15-05047-CAG); *Unit 82 Joint Venture v. International Commercial Bank of China*, No. 08-13-00088-CV (Civ.App.—El Paso November 5, 2014, pet. denied); *Remote Control Hobbies, L.L.C. v. Airborne Freight Corp.* No. 14-12-01088-CV (Tex. App.--Houston [14th Dist.] March 27, 2014) no pet. (Venue sections of Ch. 64 did not apply for a turnover receivership.); *Schultz v. Cadle Co.*, 825 S.W.2d 151, 154–55 (Tex. App.—Dallas 1992, writ denied 852 S.W.2d 499 (Tex. 1993), per curiam, (The Ch. 64 requirements for the appointment of a receiver under Ch. 64 did not apply for a turnover receiver.); *Holland v. Alker*, No. 01-05-00666-CV, 2006 WL 1041785 (Tex. App.—Houston [1st Dist.] Apr. 20, 2006, pet. denied)(mem. op.).

Attorneys and the courts often confuse the two receiverships. There is not anything in Chapter 64 indicating that the legislature was thinking about § 31.002 in 1985, when it codified the receivership articles into Chapter 64. With

only a few exceptions, the substance of Chapter 64 comes to us from the late 1880s and the early 1900s, well before the turnover statute was enacted in 1979. The drafters had not conceived of turnover relief, and could not have meant for these laws to apply in a turnover context.

The intent and functioning of the turnover receivership is not at all like that of a Chapter 64 receivership. The point of the turnover statute is to aid the diligent creditor in collecting its judgment by compelling the defendant to turn over its non-exempt property for liquidation. In contrast, the Chapter 64 receivership contemplates a receiver running a business or preserving property in a prejudgment context. (See, Appendix 7).

Although the receivership order will grant the receiver all of the defendant's contract rights, the turnover receiver will be using those rights to find and take property, not to run the business. Do not expect the receiver to pay the debtor's light bill from proceeds or to give the defendant an allowance.

F. Turnover Receivership Does Not Prevent Dormancy

Although the receiver is an officer of the court, the receiver is not a sheriff or constable. A sheriff or constable is specifically required for a writ of execution which prevents dormancy under TRCP 622 and 629. *Oukrop v. Tatsch*, No. 03-12-00721-CV, (Tex. App.--Austin, July 23, 2014, no pet.)

G. Court Supervision

The court supervises the receivership. Unless the receivership order states otherwise, the court is not required to ratify the receiver's decisions. The receiver's authority derives from the order. See, *M&E Endeavours LLC v Air Voice Wireless LLC*, Nos. 01-18099852-CV, 01-19-00180-CV (Tex. App.—Houston [1st Dist] August 27, 2020, no pet.).

H. Receiver Is An Arm Of The Court

The receiver is an arm of the court and is answerable to the court, not to plaintiff's counsel. In *Gutman v. De Giulio*, it was not improper for the receiver to seek an amended order to remedy problems affecting the validity of the initial order and it was not an abuse of discretion for the trial court to enter the receiver's proposed amended order.

"The crux of Gutman's argument is that court must enforce the unlawful turnover order so that he can recover exempt property from the Judgment Debtor because the Initial Order he drafted allows him to do so and the Judgment Debtor did not object. While this is a novel argument, it has no merit. Although a judgment debtor has the burden to raise exemptions, the issue here is not who had the burden of proof in the initial turnover proceeding. Rather, the issue is whether the Court may properly enforce a turnover order that is contrary to law."

Gutman v. DeGiulio, 05-20-00735-CV (Tex.App.—Dallas February 25, 2022, no pet.)(citations omitted).

XV. THE RECEIVER'S TOOLBOX: THINGS A RECEIVER CAN DO THAT YOU MIGHT NOT HAVE THOUGHT ABOUT

The receiver under a comprehensive receivership order may...

A. Levy on Bank Accounts

The receiver can levy on bank accounts and non-exempt investment accounts. The receiver can call the bank anytime, checking on the status of the accounts and levying when the balance is good. The receiver's levy on bank accounts does not time out. The receiver who is on good terms with the legal departments of the large banks can also often get useful information about the debtor's deposit history. If the balance is low, the receiver can easily find out whether the levy just hit on a bad day or if the defendant really isn't using the account much.

B. Sell Assignable Permits and other Rights

The receiver may sell any transferable property right of the debtor, for example, the defendant's city permit to operate a taxi service.

C. Use A Broker, Hold An Auction Or Have A Private Sale

The receiver may sell the defendant's interest in non-exempt real property in the manner that makes the most sense for the situation. Options include doing the sale via a receiver's auction, at a private sale or through a broker.

D. Lock Out The Debtor

The receiver may change the locks, subject to the lease provisions.

E. Obtain Information From Third Parties

Anyone who has accepted a check from the defendant knows where he banks. Because the receiver has the defendant's contract rights, and the right to documents relating to the defendant's property, the receiver can demand

copies of credit applications, contracts and leases from anyone who has accepted payments from the defendant, such as his mortgage company and the finance company on his car. The receiver can demand copies of recent payments—a direct lead to a good bank account.

The receiver can obtain information from landlords, business associates, and business references of the defendant. Landlords, business references, and associates of the defendant are usually hesitant to talk to the creditor's counsel, but they will often provide valuable information to the receiver, a court appointed official. Often, they have a copy of the defendant's check in their file.

F. Get a Copy of the Lease From The Landlord

The receiver can obtain the lease to the defendant's location. The receiver has the defendant's contract rights, including any rights to the defendant's lease. If the defendant is playing musical chairs with his assumed name, the lease shows who really is doing business there. In a case where the defendant claims to have changed hands, looking at the lease can be very helpful. Defendants often don't bother to change the lease.

G. Levy on Proceeds From a Lawsuit

The receiver can levy on the proceeds from the defendant's anticipated recovery in a lawsuit.

H. Levy On Government Contracts

Have you ever had a defendant tell you that they have a big contract with the government that is about to pay off, but they are cagey about disclosing the details? Sometimes a little hint like the general location of the project or the type of services provided is enough to allow the receiver to track down the contract and levy.

I. Capture the Defendant's Mail

The defendant's mail may contain a wealth of information. Customer payments come in the mail. Besides being able to cash the check, the receiver learns who some of the debtor's customers are. Some of these may be good targets for a levy capturing future payments owed by the customer.

The receiver can get bank statements and statements for investment accounts; get other leads to where the defendant banks; get the defendant's cell phone numbers from the phone bill; get the debtor's online user name from the internet provider's bill; or perhaps find out that the defendant is a valued customer of the Luxor in Las Vegas.

Even a collection notice can reveal valuable information. Once, we received a statement from a collection office confirming payment. A copy of the debtor's check was included.

Capturing the mail also will give the receiver a handle on how bad the defendant's financial situation really is. The mail may include NSF notices, past due invoices from trade creditors, late child support notices, bad check notices, and the like.

Caution: See *Congleton v. Shoemaker*, No. 09-11-00453 CV (Tex.App. Beaumont, April 12, 2012 pet denied) (mem. op.). This is the only case against capturing the mail. The Beaumont Appeals Court calls it an "impermissible mail obstruction", but the turnover statute was meant to be open ended. David Hittner, *Texas Post-Judgment Turnover & Receivership Statutes*, 45 Tex. Bar J. 417, 417-18 (1982) (citing House and Senate committee reports). The reality is that the post office allows it. The receiver could not intercept the defendant's mail without the post office's consent. I would argue to a court that being able to review the defendant's mail may be essential to finding assets, at least in some cases. Chapter 7 trustees capture the mail of a business debtor on a regular basis. If your judge is against the idea, you might be able to come back later with a request for additional relief based on good cause.

J. Search Through The Defendant's Office

The receiver can search through the defendant's office in search of that elusive checkbook. With a good support staff and just a little bit of luck, the receiver can have the defendant's bank account frozen before he gets back to the office from the defendant's location. Searching through the defendant's office may also net cash and checks from customers that have not been deposited yet.

K. Levy On Accounts Receivable

The receiver can levy on the debtor's accounts receivable.

L. Levy on Rents.

A levy on rents works better for commercial tenants than for residential tenants. In my experience, residential tenants will not comply with a receiver's levy for rent and it is not worthwhile to force the issue.

M. Bring A Lawsuit

The receiver can bring a lawsuit to recover the debtor's property, and to bring a claim against a principal or a director on behalf of the corporation in receivership. The receiver can sue to collect accounts receivable or enforce other property rights.

N. Reconstruct The Debtor's Customer List

If you know where the defendant banks, the receiver can sometimes reconstruct the debtor's customer list for under \$100, without any cooperation from the debtor. The receiver orders copies of non-cash deposits from the bank. For the price of the bank's normal research fees, the bank will provide copies of the debtor's deposits-- his customer's checks. Those who show up more than once are probably regular customers, ripe for a levy on their current account payable to the debtor.

O. Obtain Copies Of Tax Returns From Accountants.

The receiver can obtain copies of tax returns from the debtor's CPA, along with the CPA's notes and working papers. The receiver has the debtor's right to obtain documents from their CPA.

P. Take Possession Of Miscellaneous Property Rights

The receiver can use the defendant's contract rights and property rights. For example, the receiver may get the defendant's season tickets directly from the sports club.

Q. Reach Property Outside Of Texas

The turnover statute enables you or the receiver to reach property outside of Texas by compelling the defendant to turn it over, along with any indicia of ownership. (See section VIII, above.)

R. Take Control of Refillable Debit Cards

Some of the large chain check cashing stores have refillable debit cards. With the right information, the receiver may be able to take the funds from the account accessed by the card.

S. Obtain Defendant's Credit Report

If provided for in the order, the receiver may purchase the defendant's credit report from the credit bureaus.

XVI. SELLING REAL PROPERTY

The receiver may sell real property that is worth more than the judgment debt. This is not unfair because the debtor would receive the surplus. *Salaymeh v. Plaza Centro LLC* 258 S.W.3d 236 (Tex. App.—Houston [1st. Dist.] 2008, no pet.). The Court may confirm the sale after the fact. *Id.*

Unless there is a showing of fraud or material irregularities, or that the sales price was so inadequate as to shock the conscience of the court, a sale should not be overturned because the price was low. *Salaymeh*, at 222, 223; *Scheel v. Alfaro*, 406 SW3d 216 (Tex. App.--San Antonio 2013, pet. denied). Adequate notice of the sale should be given so that the debtor has a chance to pay the judgment before the property is sold. *Scheel*, 223.

XVII. GARNISHMENT V. RECEIVERSHIP

Is it better to garnish the defendant's bank or appoint a receiver to levy on the defendant's bank accounts?

A. Lawsuit v. Motion Practice

Garnishment is a lawsuit, with all the costs of filing and serving a lawsuit. The defendant must be notified of the garnishment and of his right to regain possession of the property by filing a replevy bond. Obtaining a receivership order is motion practice against the defendant. Turnover motions may be brought *ex parte*.

B. Garnishee's Attorney's Fee v. The Bank's Administrative Fee For Legal Processing

A garnishee is required to answer the garnishment and is entitled to their attorney's fees. A receivership order gives the receiver the power to take possession of the defendant's bank accounts. The order will give the receiver the defendant's contract rights. The bank must recognize the receiver's right to possession and also that the receiver has the bank's customer's contract rights. Some of the smaller banks refer the levy to outside counsel, who may charge a small fee from the captured funds. However, the large banks handle a receiver's levy internally and deduct \$100 or less from the captured funds as an administrative fee. If the bank does refer the levy to counsel, the fees should be limited, considering the bank is entitled to rely on a certified copy of the receivership order. Tex. Civ. Prac. & Rem. Code Ann. § 31.010 (West 2015). The bank is entitled to a reasonable attorney fee "if there is a contest." *Id.*

C. The Receiver's Levy Does Not Time Out Until The Judgment Is Paid

A garnishment captures funds in the bank's possession from the time of service of the writ through the time of bank's answer due date. *Wrigley v. First Nat'l Sec. Corp.*, 104 S.W.3d 252, 256-57 (Tex. App.—Beaumont 2003, no pet.). The receiver's right to the debtor's accounts attaches when the bank has been served with a certified copy of the receivership order. Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (g) (West 2015). The receiver's authority continues until the receivership is closed or the judgment is satisfied.

D. One Receiver Replaces The Need For Multiple Garnishments

In cases where the judgment debtor has accounts at several banks, a garnishment action would have to be filed and served on each bank. A receiver can levy on several banks much more efficiently. The receiver can also serve a levy on account receivables due to the defendant. Without a receiver, you would have to have a writ of garnishment issued for each company that owes the defendant money.

E. Quick Response Time

Some banks respond to the receiver's levy very quickly. It is not uncommon for our office to learn the status of the defendant's bank accounts within hours of serving the levy. The bank's check may arrive in our office within a week.

F. The Bank Account Returned to the Debtor's Control Faster in Receivership.

The receiver can negotiate a payout agreement with the debtor very quickly, and instruct the bank to return control of the account back to the debtor. With a garnishment, the bank may wait until the Monday next after 20 days of being served just to file its answer, and then the rest of the garnishment proceeding must be played out.

G. When Garnishment May Be More Appropriate Than a Receivership

1. Timing

A garnishment can be had more quickly than a receivership. Many courts will not grant a receivership *ex parte*, so you would have to wait for a hearing. If you know that the funds in the defendant's account are in immediate danger of being lost to the creditor, a garnishment may be your best option. However, for the most part, you are just as likely to capture the defendant's money this month as you are next month, so consider using a receiver.

2. Proceeds of Exempt Property

Under § 31.002 (f), the proceeds of exempt property remain exempt and are not subject to turnover. But this is only a turnover rule. If you think you have a sub (f) issue, consider a garnishment. *Marrs v. Marrs*, 401 S.W.3d 122 (Civ. App.—Houston [14th Dist.] March 2011, no pet.).

3. Determining Rights of Third Parties.

Turnover is a procedural device aimed at the judgment debtor's property. It cannot be used to adjudicate the rights of a third party who claims an interest in the property. However, garnishment is a lawsuit against the third party. You can use garnishment to determine the third party's rights to the property.

4. Bankruptcy Lien On The Money.

Service of a writ of garnishment creates a lien on the money. If the debtor files bankruptcy and there is no preference action to reclaim the money, the creditor keeps it. On the other hand, a receiver is a custodian of property of the estate. The receiver has to give the money to the trustee under 11 U.S.C. §543, unless excused by the bankruptcy court.

H. Summation: Garnishment v. Receivership.

After preparing & serving one garnishment, the creditor only gets the funds captured at one bank from the day of the writ through that one bank's answer. Requesting a receiver is motion practice. The creditor can have all of the power and flexibility of a receivership working for it.

XVIII. THE RECEIVER'S LEVY AND THE BANK

A. The Bank Is Not Liable to Its Customer for Compliance with a Receivership Order

A financial institution that complies with an order to turn over assets to a receiver is not liable for such compliance to the judgment debtor, a party claiming through the judgment debtor, a co-depositor with the judgment debtor, or a co-borrower with a judgment debtor. The bank is entitled to rely on a certified copy of the receivership order. Tex. Civ. Prac. & Rem. Code Ann. § 31.010 (West 2015); *Yazdchi v. Bank One*, 177 S.W.3d 399 (Tex. App.—Houston [1st Dist.] 2005, pet. denied).

In a separate, later *Yazdchi* opinion, the Fourteenth District followed *Yazdchi v. Bank One*, saying the First Court had found that the banks were “statutorily immune” from liability for transferring funds from the Yazdchis’ accounts to the receiver. *Yazdchi v. Tradestar Inv. Inc.*, 217 S.W.3d 517 (Tex. App.-- Houston [14th Dist.] 2006, pet. denied).

B. The Burden Is on the Debtor to Contest the Receiver’s Levy

The Texas Finance Code puts the burden of contesting the levy on the debtor:

The customer bears the burden of preventing or limiting a financial institution’s compliance with or response to a claim subject to this 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.

Tex. Fin. Code Ann. § 59.008 (c) (West 2013); *Yazdchi v. Bank One*, 177 S.W.3d 399 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)

See, also, *Davis v. West*, where a summary judgment in favor of the bank was sustained. 317 S.W.3d 301 (Tex.App.—Houston [1st Dist.] 2009, pet. denied). The bank honored a receiver’s levy that had been only been served on the bank via fax. The opinion used § 59.008 and *Yazdchi* in its analysis.

C. The Bank Should Not Mention a Record Request by the Receiver to Its Customer

Texas Finance Code Ann. §59.006 (West 2013 & Supp. 2015), Discovery of Customer Records, provides the *exclusive method* for compelled discovery of a record of a financial institution relating to its customer.

“This section provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. This section does not apply to and does not require *or authorize* a financial institution to give a customer notice of: ... (5) a record request by a duly appointed receiver for the customer.” (emphasis added) § 59.006 (a) (5).

Of course, the bank will have to notify its customer of withdrawals from the account. So, if you don’t want the defendant to know that you have also requested copies of bank statements and deposits, the receiver’s record request should be served in a separate document from the receiver’s levy on the bank account.

The bank cannot claim that the Gramm Leach Bliley Act prohibits the bank from giving up its documents with regard to the debtor. 15 USC 6802 (e) (8) specifically excludes properly authorized civil investigations and subpoenas from the prohibition against sharing private information.

XIX. USING THE RECEIVER ON SMALL DOLLAR CASES

The receiver’s fee is taxed against the defendant as a cost, in the receivership order. The fee is added to the judgment amount and is paid from the recovery.

The creditor should expect to come out of pocket for putting up the receiver’s bond (usually \$100 or \$200 in county court), if any, and perhaps some expenses such as fees charged by a third party for subpoenaed documents. If the creditor is willing to fund a garnishment (filing fee, and cost of service of process, and possible bank’s attorney fees), it is a better deal to risk the same amount, or less, to have a receiver appointed.

XX. GETTING THE RECEIVER APPOINTED

A. Same Elements as Turnover Relief in General

The elements are the same for getting other turnover relief. The applicant has an unsatisfied judgment and the debtor owns non-exempt property. See section IV.

B. Who May Be A Receiver?

The turnover statute is silent as to who may be a receiver. As stated above, Chapter 64 of the Texas Civil Practice & Remedies Code (receivership to preserve property) does not apply to turnover receiverships, however trial courts and counsel sometimes use the Chapter 64 requirement (*see, Moyer v. Moyer*, 183 S.W.3d 48 (Tex. App.-Austin 2005, no pet.): a receiver must be a citizen and qualified voter of this state at the time of appointment and not be a party, attorney or other person interested in the matter.

The mere fact that a receiver expects to get paid from receivership property does not make the receiver a person “interested” in the appointment of a receiver. *Swate v. Johnston*, 981 S.W.2d 923 (Tex.App.--Houston [1st Dist.] 1998, no pet. n 1).

The receiver must also maintain actual residence in Texas during the receivership, under Chapter 64. Tex. Civ. Prac. & Rem. Code Ann. § 64.021 (West 2008). Turnover receivers might as well live in Texas.

As a practical matter, it is helpful to find someone who is experienced with collection practice and is well versed in the exemptions. If you know who you would like to use as receiver, contact the receiver before the hearing to discuss fees and anything the receiver might want included in the order.

C. The Receiver Qualifies

The receiver should qualify to serve by filing an oath and the bond, if one was ordered. The turnover statute does not require a receiver's oath, but most orders state that the receiver should file an oath, and judges expect to see one. No bond is required by the statute or the case law (see below), but if the judge sets a bond, the bond should be paid before the receiver begins work.

XXI. PROCEDURAL CONSIDERATIONS- RECEIVERSHIPS

A. No need to wait 30 days

See, section VI, above. However, if a motion for a new trial is granted, the turnover order evaporates. *Scheel v. Alfaro*, 406 SW3d 216 (Tex. App.--San Antonio 2013, pet. denied), citing *Baca v. Hoover, Bax & Shearer*, 823 S.W.2d 734, 738-39 (Tex.App.--Houston [14th Dist.] 1992, writ denied).

B. May be granted ex parte.

See section VI, above.

Unless there is a good reason not to, give the defendant notice of the hearing. If the defendant has notice, it will be much less likely to bring an application for a TRO once the receiver begins seizing assets. Also, the TRO would be much less likely to succeed if the matter has already been heard. Defendants usually do not appear, so you might as well give notice.

C. No Bond Is Required

Childre v. Great Sw. Life Ins. Co., 700 S.W. 2d 284 (Tex. App.—Dallas 1985, no writ). The decision whether to require a receiver's bond lies within the court's discretion. Texas Rule of Civil Procedure 695a, which requires a bond "...conditioned for the payment of all damages and costs in such suit..." does not apply. *In re Estate of Herring* 983 S.W.2d 61, 64 (Tex. App.—Corpus Christi 1998, no pet.).

Rule 695a is clearly for a prejudgment / Ch 64 matter. It provides for a receiver's bond to protect the defendant in the case of a wrongfully appointed receiver. The idea of a wrongfully appointed turnover receiver is out of context, because creditor has already won its judgment and the elements will have been proved up at the hearing.

"There is a strong view that since the underlying obligation has been determined by final judgment, the judgment debtor will not be harmed if no bond, or merely a nominal bond, is required. Any bond which may be required should be carefully framed so as not to indemnify the judgment debtor in the traditional sense, as the righteousness of the appointment should have been fully litigated in any hearing pursuant to the new statutes."

Childre, 700 S.W.2d at 289. The only possible purpose for a receiver's bond would be one paid by the creditor to indemnify the receiver for out of pocket costs.

Unless the judgment debtor shows extraordinary circumstances,

any bond required should not be in an amount that would act as a prohibitive cost or make it economically impossible for the judgment creditor to use the remedies provided in [the turnover statute] for even the smallest of judgments.

Id. at 289 (quoting Hittner, *supra*, at 420); *Shultz v. Cadle Co.*, 825 S.W.2d 151, 154-155 (Tex.App.—Dallas 1992, writ denied); *Estate of Herring*, 983 S.W.2d 61 (Tex. App.—Corpus Christi, 1999, no pet.).

D. The Traditional Requirements for Appointment of a Receiver Do Not Apply

In *Childre*, the judgment creditor sought an injunction, as well as the appointment of a receiver. *Childre*, the judgment debtor, argued that the creditor had not exhausted its remedies, because the injunction had not yet been denied. 700 S.W. 2d at 288. Also, the creditor had not shown imminent harm would occur unless an injunction was granted. *Id.* However, the court ruled that the traditional requirements for the appointment of a receiver do not have to be met. The creditor need not exhaust its remedies and did not have to show imminent harm. *Id.*; *Hennigan v. Hennigan*, 666 S.W.2d 322, 323 (Tex.App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.); *Roosth v. Roosth*, 889 S.W.2d

445, 458 (Tex.App.—Houston [14th Dist.] 1994, writ denied); *Fleming v. Nasa Federal Credit Union*, No 04-00555-CV (Tex.App.—San Antonio, January 18, 2023, no pet. h.).

Receiverships for preserving property, found at Chapter 64 of the Civil Practice and Remedies Code, requires a showing that the property subject to the receivership is in danger of being lost, removed, or materially injured. Tex. Civ. Prac. & Rem. Code Ann. § 64.001 (b) (West 2008). However, the turnover statute does not refer to the requirements of Chapter 64:

Indeed, if the Texas legislature had intended for the appointment of receivers in turnover proceedings to meet the requirements of the receivership statutes, it would have provided for or at least referred to these requirements in the turnover statute. Since the turnover statute does not provide specific requirements for the appointment of a receiver, this decision falls within the trial court's discretion.

Schultz v. Cadle Co., 825 S.W.2d 151, 155-55 (Tex. App.—Dallas 1992, writ denied) (internal citations omitted).

XXII. DRAFTING CONSIDERATIONS

A. Vague Orders

Technically, an order need only be specific enough to tell the judgment debtor what to turn over so as to support a contempt action and to let the receiver know what kinds of assets are in receivership. However, when drafting your order think of it as a roadmap for non-lawyer third parties who will have to decide whether to comply with a request from the receiver. For example, a landlord who sees in the order that the receiver may request documents from landlords will be much more likely to comply with the request.

It is not a fatal defect if an order fails to state that only non-exempt property is to be seized because the statute limits turnover to non-exempt assets. *Yancey v. SLJ Company, LLC*, No. 05-21-00404-CV (Tex.App.—Dallas, December 7, 2022, no pet.); *Gutman v. DeGiulio*, 05-20-00735-CV (Tex.App.—Dallas February 25, 2022, no pet.).

B. § 31.002 (h): Specificity In Turnover Orders

§ 31.002 (h), enacted in 2005, allows for a laundry list order covering various categories of assets.

“[T]he trial court was not required to identify the property subject to the receiver's authority.” *Yancey v. SLJ Company, LLC*, No. 05-21-00404-CV (Tex.App.—Dallas, December 7, 2022, no pet.).

Subsection (h) supersedes a troublesome line of cases requiring property to be specifically identified in the turnover order. *Goodman v. Compass Bank*, 05-15-00812-CV (Tex.App.—Dallas August 3, 2016, no pet.). *See, Bergman v. Bergman*, 828 S.W.2d 555, 557 (Tex. App.—El Paso 1992, no writ); *Roebuck v. Horn*, 74 S.W.3d 160 (Tex. App.—Beaumont 2002, no pet.); *Moyer v. Moyer*, 183 S.W.3d 48 (Tex. App.—Austin 2005, no pet.). The legislature has made it clear that: “A court may enter or enforce an order under this section that requires the turnover of non-exempt property *without* identifying in the order the specific property subject to turnover.” § 31.002 (h) (emphasis added).

These cases required the creditor to put the debtor on notice, via the turnover application, of what properties to transfer or hide. Also, if undisclosed leviable property was found after the order was signed, under this line of cases, the newfound property would not be subject to turnover, not having been identified in the order. These cases go against the intent of the turnover statute—to put the burden of disclosure on the defendant and to give the creditor an affordable, effective remedy. § 31.002 (h) provides that the order does not have to specifically identify the property.

David Hittner, in his article introducing the turnover statute, recommends that “The proposed order shall state with *reasonable particularity* the items to be turned over.” David Hittner, *Texas Post-Judgment Turnover & Receivership Statutes*, 45 Tex. Bar J. 417, 419 (1982) (emphasis added). My view is that a laundry list type order satisfies this requirement and § 31.002 (h).

There are cases after § 31.002 (h) was enacted where it was found to be an abuse of discretion to order turnover of property when there was no evidence that the defendant owns any of that kind of property. *See, for example, Stanley v. Reef Sec., Inc.*, 314 S.W.3d 659 (Tex.App.—Dallas 2010, no pet.). If you find yourself in that situation, consider submitting an order that does not compel the debtor to turn over the property, but empowers the receiver to seize it. For future rights to property, consider language compelling the defendant to turn it over within a set time period once the defendant obtains possession or control over that type of property. *See, the subsection (h) discussion above, in the general turnover section at IV B and IV C.*

The order should be specific enough to support an eventual contempt action against the debtor for failure to turn over property as ordered. The order should spell out the details of compliance “in clear, specific and unambiguous

terms” so the debtor will know exactly the duties or obligations imposed on it. *Ex parte Hodges*, 625 S.W.2d 304, 306 (Tex. 1981) (following *Ex parte Slavin*, 412 S.W.2d 43 (Tex. 1967)).

1. Examples

- a. An order directing the turnover simply of “all non-exempt assets” was reversed in *Bergman v. Bergman*, 828 S.W.2d 555 (Tex. App.—El Paso 1992, no writ). While such an order may no longer be reversible in light of subsection (h), it would still be hard to enforce. It would not be specific enough to support a contempt against the defendant for failure to make the turnover, and it may not even be specific enough to let the receiver know what assets are in his charge.
- b. “Income derived from the law practice” is specific enough. *Thomas v. Thomas*, 917 S.W.2d 425, 434 (Tex. App.—Waco 1996, no writ).

C. Orders against Corporations

1. An order that is not against a natural person does not need to reference non-exempt assets. Only natural persons benefit from the exemptions.
2. It is not strictly necessary to name a natural person as respondent for an entity:
Although a corporation is legally distinct and cognizable entity, it is only able to act through its agents. Since a corporation is capable of violating a court order only if its agents act or refrain from acting, it follows that an order directed at a corporation is binding on agents authorized to act on its behalf, whether specifically named in the order or not. There can be no doubt that a command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. Were this not true, entities could delegate their disobedience to physical actors who, since they would be beyond judicial power, would have no reason to recognize or obey it. *Ex parte Chambers*, 898 S.W. 2d 257, 260 (Tex. 1995) (citations omitted).

Not naming an individual as respondent means that you would have to convince the court both that the entity is in contempt and which individual should be held accountable. Take the belt and suspenders approach by naming a person in charge as respondent.

D. Should Your Order Include Master of Chancery Powers?

Some attorneys include master in chancery powers in their receiver orders. Some orders in circulation include master of chancery powers without using the term “master” or “Master in Chancery”. The idea is that the receiver, having the powers of a master, could command the judgment debtor and non-party witnesses to appear at a hearing to testify about the debtor’s assets. Also, a master will file a report with his or her findings. It is important to note that the master’s report becomes conclusive if there is no timely objection.

However, the case law has come down against the use of a master in a turnover context. Rule 171, Master In Chancery, states, “The court may, *in exceptional cases*, for *good cause* appoint a master in chancery...” (emphasis added). In *Suttles v. Vestin Realty Mortgage I, Inc.*, the First District did not find good cause or that the case was exceptional. 317 S.W.3d 412 (Civ. App.—Houston [1st Dist.] 2010, no pet.). The First District compared post judgment collection to a complex toxic tort case with 19 parties. The order appointing a master in the toxic tort case was vacated. See, *Simpson v. Canales*, 806 S.W.2d 802 (Tex. 1991). It follows that post judgment discovery does not merit the appointment of a master.

A Master should probably not be deciding who owns the property. See, *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chemical Company, L.P.*, 540 S.W.3d 577 (Tex. 2018)(per curiam).

Does a conflict of interest arise when the receiver is also a master, having the power to rule upon his own right to obtain information? This question was raised in the appeal in *Roebuck v. Horn*, 74 S.W.3d 160, 163-64 (Tex. App.—Beaumont 2002, no pet.) and remanded back to the trial court for consideration. (See, also, *Sheikh v. Sheikh*, 248 S.W.3d 381 (Tex. App.—Houston [1st Dist.] 2007, no pet.)). In a later Ninth District case, they find a conflict because the receiver’s fee comes out of what the receiver is able to collect, and that same person could be ruling upon objections as a Master. *Congleton v. Shoemaker*, 09-11-00453-CV (Tex.App.—Beaumont April 12, 2012, pet. denied) (mem. op.).

Although having the receiver appointed as master could greatly facilitate the search for the judgment debtor’s assets in some cases, the post judgment discovery of assets is not the exceptional circumstance required by Rule 171. An order granting a receiver the powers of a master raises a conflict of interest issue that might not survive a challenge.

Appellate review of an order appointing a master in chancery is done through a petition for writ of mandamus. *Moyer v. Moyer*, 183 S.W.3d 48, 58 (Tex. App.-Austin 2005, no pet.); *Tanner v. McCarthy*, 274 S.W.3d 311, (Tex.App.—Houston [1st Dist.], 2008, no pet.).

E. Handling The Receiver's Fee In The Order.

Include language taxing the receiver's fee and expenses against the defendant as a cost of court. It is important to put the receiver's rate into the order because the receiver needs to know how much money to ask the bank and accounts receivable for. In most cases, we only get one bite at the apple. We can't ask the bank for X dollars, wait for a hearing to determine receiver's fees, and then go back to the bank for more money. My view is that a receiver's levy should state a specific dollar amount to be seized. If the receiver's levy simply locks down the entire balance in the account, there is a risk that more money will be seized than is required to satisfy the judgment. So, the order should state how the fee is calculated. The sample order in the appendix shows how I handle it.

Say in the receivership order that the fee calculation is usual and customary. Do not include a finding that the receiver's fee is reasonable. A finding that the receiver's fee is reasonable, before the receiver has done any work, is premature and an abuse of discretion. *Moyer v. Moyer*, 183 S.W.3d 48 (Tex. App.-Austin 2005, no pet.). In *Moyer*, the order awarded the receiver 25% of all proceeds coming into his possession, found that it was a reasonable fee, and authorized the receiver to pay himself.

State in the order that the fee calculation (25%) is the usual and customary fee for a turnover receiver. Later in the case, when there are funds to distribute, get a new order on the reasonableness of the fee. The 5th District upheld the receiver's contingent fee in *Evans v. The Frost National Bank*. *Evans* was distinguished from *Moyer* because in *Evans* the receiver came back later and got a new order on reasonableness. *Evans v. The Frost National Bank*, No. 05-12-01491-CV (Tex.App.--Dallas August 11, 2015, no pet.)(mem. op.). See also, *Copeland v. Bluebonnet Financial Assets*, 05-21-00714-CV (Tex.App.—Dallas, June 7, 2023, no pet.).

Courts need to recognize that post judgment collection is mostly a contingent fee arena. There continues to be litigation under *Moyer* and cases that follow it, which is based on rules for determining the reasonableness of an hourly fee receiver. *Moyer* applied an hourly fee rationale derived from old cases to a turnover post judgment collection situation.

F. Miscellaneous

1. The order should state that it is based upon the evidence (as well as arguments of counsel and perhaps the papers on file). See the discussion in section IV.
2. The receiver's authority comes from the order appointing the receiver. The order must comply with the statute authorizing the appointment. *Ex parte Hodges*, 625 S.W.2d 304, 306 (Tex. 1981). If you have a particular asset in mind to be turned over, or a particular type of asset, put it in the order.
3. No bond is required. However, it is within the court's discretion. Some attorneys draft the order with a blank for the court to fill in, and the court can fill in a zero: "The receiver is / is not required to post a bond of \$ _____."
4. The judgment creditor is entitled to recover reasonable costs, including attorney's fees. Include a provision for your post judgment attorney's fees and costs. § 31.002 (e). Consider adding a sentence allowing the creditor to seek additional fees later.
5. Do not have the property turned directly over to the creditor. "The potential for error or abuse where turnover is ordered directly to judgment creditors is obvious, considering that the statute allows ex parte entry of the order without notice and hearing." *Ex parte Johnson*, 654 S.W.2d 415, 419 Tex. 1983); *Lozano v. Lozano*, 975 S.W.2d 63 (Tex. App.—Houston [14th Dist.] 1998, pet. denied).
6. If the judge in your case is hesitant to appoint receivers, or if you are not sure, consider including language in the order to the effect that the receiver shall hold any property seized until directed by further orders of the court or until there is a written agreement with the defendant. This assures the judge that the court maintains control over the seized assets, notwithstanding the broad powers granted to the receiver. Language stating that the receiver will not distribute without an agreement or the court's approval could be the key to getting a reluctant judge to sign your order.
7. The most useful receivership order both compels turnover of the debtor's property and empowers the receiver to take possession of it. For each piece of property or type of property that the debtor is to turn over, give your receiver the power to take possession. If you are ordering the turnover of a type of property in a laundry list, condition it so that the turnover is required within a set number of days after receipt by

the defendant. This is to avoid an order that compels turnover of something the creditor never proved that the defendant owns.

8. Review the form you are using carefully and re-work language that is not appropriate to a turnover receivership. The turnover order should not have empowering language about running the debtor's business. The receiver is appointed to seize and sell the defendant's assets. § 31.002 (b) (3).
9. Include a clause that the receiver may take control of the defendant's mail and the mail of any business owned by the defendant by redirecting it to the receiver's address. But, see the discussion on capturing mail in section XV, above.

Some judges will only approve language that captures business mail. However, if the debtor's address is a business address, the distinction is meaningless. *All mail sent to a business address is presumed to be business mail. Domestic Mail Manual Publication 508, 1.6, March 3, 2009* (Appendix 6).

10. If the business is not wholly owned by the judgment debtor, draft the order to only bring the debtor's interest into the receivership. *Roebuck v. Horn*, 74 S.W.3d 160, 163-64 (Tex. App.—Beaumont 2002, no pet.).
11. If you want the order to require the debtor pay a certain sum of money every month, the order must specify what non-exempt property is owned by the debtor and direct that the payments will come from that property. An order compelling payments that does not identify any non-exempt assets sufficient to cover the payments or says what the non-exempt source of the payments is will be overturned as an abuse of discretion. *See, Ex parte Prado*, 911 S.W.2d 849, 850 (Tex. App.—Austin 1995, no writ); *W.T.J. v. S.L.S.*, No. 03-10-00335-CV (Tex.App.— Austin August 2012, no pet.) (mem. op.).
12. Be aware of the line of cases holding that the order should specify which assets are to be turned over by debtor. *Moyer v. Moyer*, 183 S.W.3d 48 (Tex. App.—Austin 2005, no pet.); *Bergman v. Bergman*, 828 S.W.2d 555, 557 (Tex. App.—El Paso 1992, no writ); *Roebuck v. Horn*, 74 S.W.3d at 163-64. These cases have been superseded by statute. Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (h), There is a small handful of opinions issued after sub (h) was enacted that ignore the statute, so watch out for those.
13. A post judgment order cannot be inconsistent with the original judgment. It cannot require performance of obligations in addition to the obligations imposed by the final judgment. "This is particularly true when such orders purport to adjudicate the rights of non-parties." *In Re Old American County Mutual Fire Insurance Company*, No. 13-14-00231-CV (Tex. App.— Corpus Christi Sept 25, 2014, orig. proceeding).

XXIII. BANKRUPTCY ISSUES

A. General Discussion

Once the defendant files its bankruptcy petition, all collection actions, including the receivership, must cease, per the automatic stay. 11 U.S.C.S. § 362 (LEXIS L. Publg. 1995 & Supp. 2008).

11 U.S.C.S. § 543 (LEXIS L. Publg. 2007), Turnover of Property by a Custodian, prohibits the receiver from administering or making any distributions from the debtor's property, except as may be necessary to preserve the property. The receiver is to deliver the property to the trustee and file an accounting. § 543 (b). The receiver is entitled to its fee for preserving the debtor's property, after notice and a hearing. § 543 (c). The receiver's fee is a priority administrative claim under § 503 (b) (3) (E) (A custodian superseded under § 543 which is entitled to priority under and under § 507 (a) (2)).

The receiver must turnover any property of the defendant in its possession *to the trustee*. Debtors who think that filing a bankruptcy will result in the return of their property may be surprised when they don't get it back, after all.

B. The Receivership Does Not Preclude a Bankruptcy.

In Re Gaston Premier Homes, Ltd., No. 09-11903-cag, Nov. 18, 2009, U.S. Bankr. Ct, W.D. Tex. The defendant, a limited partnership, filed a Chapter 7 after a receiver was appointed. The receiver argued that the bankruptcy should be dismissed because the debtor did not have authority to file, without the receiver's consent. Under the turnover order, the receiver controlled the defendant's assets, including its contract rights and choses of actions. There are cases supporting the receiver's position that only the receiver can authorize a bankruptcy, but they are cases about Chapter 64 receiverships. *See, Chitex Communication, Inc. v. Cathleen Kramer, Et al.*, 168 B.R. 587 (S.D. Tex. 1994). The court drew a distinction between a Chapter 64 receivership and a turnover receivership. The Court recognized that a turnover receivership is, after all, a collection device. § 31.002 does not preclude the debtor from using its remedies under federal law. On the bright side, the Court dismissed the bankruptcy on other grounds. *In Re Gaston Premier Homes, Ltd.* is important because it recognizes the difference between a Chapter 64 receivership and a Turnover receivership.

C. When the 90 Day Preference Period Starts

For property in receivership, the look back time on the preference may depend on what kind of property is seized.

In *In Re Poston*, the property was money in the bank that had been seized by the receiver. A turnover order places the defendant's property into *custodia legis* as of the date the order is signed. *First Southern Properties, Inc. v. Vallone*, 533 S.W.2d 339 (Tex. 1976). The creditor argued that the transfer of the property occurred when the receiver was appointed, which was outside the preference period. However, § 31.002 (g) states that the receiver's rights to money in a bank do not attach until the bank is properly served with the turnover order. The preference period began when the receiver served his Receiver's Levy on the bank. 08-40182; Adv. Proc. No. 100-4030, Bankr. E.D. Texas, May 24, 2012 (Affirmed at 765 F.3d 518 (5th Cir. 2014) (affirming the district court's opinion which affirmed the bankruptcy court's opinion.)). (*Poston* did not discuss the fact that the order compelled the debtor to turn over cash within a few days of receipt. The Eastern District focused only on when the receiver seized the money.)

§ 31.002 (g) only applies to property held by a financial institution. This raises the question of when the preference period would begin for other kinds of property. Many turnover orders compel the defendant to turn over property when they obtain possession of it. Also, the statute and most orders cover future rights to property. So, outside of § 31.002 (g), the transfer should be effective when the order is signed. *First Southern Props*. I would argue that property not already owned by the debtor when the order was signed comes *in custodia legis* when the debtor receives it. However, *Poston* is the authoritative case.

XXIV. SERIAL RECEIVERSHIPS

What happens when the defendant is put into receivership in two different proceedings? The defendant's non-exempt assets are *in custodia legis* as of the signing of the receivership order. *First Southern Properties. v. Vallone*, 533 S.W.2d 339 (Tex. 1976). The first receivership order signed controls. David Hittner, *Texas Post-Judgment Turnover & Receivership Statutes*, 45 Tex. Bar J. 417, 420 (1982).

“... If a court of competent jurisdiction, Federal or state, has taken possession of property, or by its procedure has obtained jurisdiction over the same, such property is withdrawn from the jurisdiction of the courts of the other authority as effectually as if the property had been entirely removed to the territory of another sovereignty.”

First Southern Properties, at 343, quoting *Palmer v. Texas* 212 U.S. 118, 29 S.Ct. 230, 53 L.Ed. 435 (1909).

The assets are in the control of the court for the first receivership. Thus, they are not available to the court ordering a later receivership. The receiver in the first receivership can elect to accept payments from the debtor over time, forcing other creditors and subsequent receivers to wait their turn.

PRACTICE TIP: Talk to the receiver in the case before yours about serving in your case as the next case in line. Your order cuts off downstream creditors from jumping in line. If the current receiver ends up levying the bank, they can levy for the amount needed to satisfy the first receivership and yours. (Funds captured would go to the earlier receivership first.) In rare cases, a debtor will agree to make payments to the receiver on both files, but that is problematical. If the debtor can afford to make two payments, why shouldn't the money all go to the first case in line? If the debtor made payments on the second file but missed payments on the first one, it wouldn't be fair to the first one. Both creditors would have to agree to such an arrangement.

A plaintiff may obtain turnover to satisfy several judgments against the same debtor. *Barrera v. State*, 130 S.W.3d. 253 (Tex.App.--Houston [14th Dist.] 2004, no pet.). The State had several judgments against Barrera. This is not support for multiple creditors participating in one turnover.

XXV. ENFORCING THE TURNOVER ORDER

Some attorneys and receivers file a contempt motion when the judgment debtor fails to do the discovery as instructed by the turnover order. Some attorneys file a Motion For Sanctions, which does not carry the threat of jail time, but it can be compelling enough. The order usually states that if the debtor does not comply by a certain date, he or she can be held in contempt. The sanctions order typically awards plaintiff's counsel fees for bringing the motion.

When drafting a contempt motion, be sure to state specifically what the defendant failed to do. A general allegation in the motion or an affidavit that the defendant failed or refused to cooperate with the receiver's request for documents is insufficient. *In Re Capoche* No. 01-12-01063-CV (Tex.App.--Houston [1st. Dist.] November 29, 2012, orig. proceeding) (mem. op.).

XXVI. WHAT YOUR RECEIVER NEEDS TO GET STARTED

Creditor's counsel brings the application for turnover relief. Once the order is signed, the creditor's counsel forwards the order to the receiver.

The receiver needs more from you than a bare copy of the order and a cover letter saying, "Sic 'em!" Send your receiver an information packet containing the following:

A. A Good Copy of the Order.

The receiver will be presenting the order to several people during the course of the receivership. A crisp, clean copy carries more weight than a faxed copy that has been reduced and muddied by scanners and fax machines.

B. A Certified Copy of the Order.

If you know where the defendant banks, or you expect to find out, go ahead and buy a certified copy of the order while you are at the courthouse. The receiver's rights to the defendant's bank accounts *do not attach* until the bank is served with a certified order. Tex. Civ. Prac. Rem. Code § 31.002 (g) (West 2015). As a practical matter, many banks, especially the large banks who are familiar with receiver levies, do not require a certified copy.

However, there is no reason to take a chance, especially if the amount sought is large or the defendant can be expected to pull some weight at their bank. If the bank is not served with a certified order, it can absolutely ignore the receiver while its customer empties his account.

Practice Tip: Take a stamped return envelope addressed to the receiver and your checkbook with you to the hearing so you can purchase certified copies while you are there. If the clerk cannot process the certified copy for you while you wait, they will mail it to the receiver in the envelope.

C. The Bond Check.

If a bond has been ordered, provide your receiver with a check in the amount of the bond. Make your draft *payable to the clerk* of the court, and send it to the receiver with your information packet. The receiver will submit the check to the court, along with the oath of office. Or, you can deposit the bond funds after the hearing while you are still at the courthouse and provide the receiver with a copy of the receipt.

In the District Courts in Dallas County and Travis County, the clerk requires a separate check for a "bond approval" fee, even on cash bonds.

D. Contact Information on the Debtor.

Your receiver needs address and contact information for the defendant, its principals, its places of business, and its counsel.

E. The Defendant's Tax ID Number.

Provide the defendant's Tax ID number or Social Security number, if you have it.

F. The Credit Application.

Does your client have the debtor's credit application? It may indicate banks and business references that the receiver can follow up with, as well as telephone numbers and email addresses.

G. Relevant Discovery.

Provide any pages of discovery responses that indicate leviable assets.

H. The Judgment.

The receiver needs a copy of the actual judgment (not the abstract) along with a brief statement of any post-judgment credits and charges, so he can keep track of the current amount due. The receiver needs this in order to calculate the payoff amount for a bank levy. The judgment helps the receiver talk to the debtor about the charges and payoff amount.

I. Information on Any Leviable Assets.

A description of the assets that you are aware of, including who might be holding them. If you have already obtained copies of asset search reports and the tax records on real property from the appraisal district's web site, forward it to the receiver.

J. Banking Information.

Provide any leads to the defendant's bank. You do not need to have the account number, but provide it if you have it.

K. Background Information.

A few sentences describing the debtor and its business is helpful. Bring the receiver up to speed on the post-judgment history of the case. Help your receiver to be authoritative and knowledgeable in discussions with the defendant by arming him with the recent history, up front. The receiver can counter the defendant's excuses, and probe for information better, when he knows the background.

XXVII. CONCLUSION

Turnover receivership has been available to creditors since 1979. You can have it with a simple motion and a hearing.

It is a powerful, wonderfully flexible collection tool that should be a regular part of your arsenal. It is not difficult to integrate the procedure of getting a receiver appointed into your regular post judgment collection practice. For about the same amount of work as it would take to get a garnishment, you could be using a receiver!

APPENDIX 1
Order Appointing Receiver And To Compel Discovery - Individual

No. XX-XX-XXXX-X

Plaintiff

v.

Defendant

In The [_____] Court

At Law Number [] Of

Dallas County, Texas

ORDER APPOINTING RECEIVER AND TO COMPEL DISCOVERY-INDIVIDUAL

CAME ON to be heard the Application for Turnover After Judgment of **[Name of the Plaintiff]** (herein “Applicant”); whereupon, the Court, after review of the papers on file in this cause, became of the opinion that a Receiver should be appointed to take possession of and sell the leviable assets of **[name of the Defendant]** (herein “Defendant”). Based on the pleadings, the judgment, the evidence, and the papers on file in this cause, the Court finds that the defendant owns non-exempt property. Notwithstanding any contrary language herein, this order does not compel turnover of Defendant’s homestead, or checks for current wages or other exempt property.

IT IS THEREFORE ORDERED that **Michael S. Bernstein, whose address is 416 S. Third Street, Garland Texas 75040-6426 (telephone number 972 / 271-2700; fax number 972 / 271-1818; email mike@dallasreceiver.com) be, and he is hereby appointed Receiver** in this case pursuant to the Texas Turnover Statute with the power and authority to take possession of and sell all leviable property of Defendant through a private or public sale, including, but not limited to the following non-exempt property: (1) all documents or records, including financial records, related to such property that is in the actual or constructive possession or control of the Defendant; (2) all financial accounts (bank account), certificates of deposit, money-market accounts, accounts held by any third party; (3) all securities; (4) all real property, equipment, vehicles, boats, and planes; (5) all safety deposit boxes or vaults; (6) all cash; (7) all negotiable instruments, including promissory notes, drafts, and checks; (8) causes of action, choses of action and judgments; (9) contract rights, whether present or future; (10) accounts receivable and (11) intangible property and property rights, including but not limited to intellectual property rights such as internet

domains, patents, copyrights and trademarks; and that all such property shall be held in custodia legis of said Receiver as of the date of this Order.

Defendant is **ORDERED** to turnover to the Receiver within five (5) days from Defendant's receipt of a copy of this Order: 1) the documents contained on **Exhibit "A"** attached hereto, together with all documents and financial records which may be requested by the Receiver; 2) all checks, cash, securities (stocks and bonds), promissory notes, documents of title, and contracts owned by or in the name of Defendant;

Defendant is **ORDERED** to identify to the receiver all interests of the defendant in any business or venture.

This ORDER constitutes a Charging Order under the Texas Business Organizations Code. This order constitutes a lien upon the judgment debtor's partnership interest in any partnership and the judgment debtor's membership interest in any limited liability company. The receiver has the right to receive any distribution to which the judgment debtor would be entitled from the debtor's partnership or membership interest.

Defendant is **ORDERED** to continue, until the Judgment in this cause is fully paid, to turnover to the Receiver at the Receiver's address all checks, cash, securities, promissory notes, documents of title, and contracts within three (3) days from the Defendant's receipt of such property. Paychecks for current wages are exempt from this order.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority, and power to: 1) collect all accounts receivable of Defendant and all rents due to the Defendant from any tenant; 2) change locks to all premises except the defendant's homestead, at which any property is situated; 3) direct the delivery of Defendant's mail and the mail of any business of the defendant to the Receiver's address and open all mail directed to Defendant and any business of the defendant; 4) endorse and cash all checks and negotiable instruments payable to Defendant, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Defendant; 6) hire any person or company to move and store the property of Defendant; 7) (the right but not the obligation) to insure any property belonging to the Defendant; 8) obtain from any financial institution, bank, credit union, credit bureau, savings and loan, title company, or any other third party, any financial records, including credit reports or credit information belonging to or pertaining to the Defendant; 9) obtain from any landlord, building owner or building manager where the Defendant or the Defendant's business is a tenant copies of the Defendant's lease, lease application, credit application, payment history and copies of Defendant's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of

Defendant may be situated, and to review and obtain copies of all documents related to same; 12) negotiate and obtain installment payment agreements with Defendant, if the receiver reasonably believes that a payment agreement is the best option to satisfy the judgment and the receiver does not compromise any amounts awarded in the judgment without the plaintiff's authorization; and 13) certify copies of this Order.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority and power to request and obtain from providers of utilities, telecommunications, telephone, cell phone, cable, internet, data services, internet website hosts, satellite television services, and all similar services, (including Time Warner, Spectrum, Frontier, AT&T, Verizon, Sprint, Satellite TV, Direct TV, EV1, Google, Yahoo, and internet blogs and chat rooms) the production of any information regarding the defendant's payments, payment history and financial information, including account information, telephone numbers, names, service addresses, telephone numbers, IP addresses, call detail records, payment records, and bank and credit card information. This Order serves as the court order required by 47 USC § 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer.

The Receiver shall have the power and authority to take control of Defendant's website by transferring Defendant's domain names to the receiver's Domain name management account. This Order specifically serves as the court order required by Section 3(b) of the ICANN Uniform Domain Name Dispute Resolution Policy, and satisfies all obligations of the Receiver to obtain and receive a court order prior to changing and transferring the domain name registrations in Defendant's names.

All Sheriffs or Constables, and their deputies, and all other peace officers, are hereby ordered to assist the Receiver in carrying out his duties and exercising his powers hereunder and prevent any person from interfering with the Receiver in taking control and possession of the property of Defendant, without the necessity of a Writ of Execution. The Receiver is authorized to have a writ of execution issued and to direct any Constable or Sheriff to seize and sell property under the writ.

[IF DISCOVERY WAS SERVED AND UNANSWERED] It is further, **ORDERED** that Defendant shall fully answer and serve on both Receiver and Applicant, within 15 days, post judgment interrogatories previously served by applicant on defendant.

It is further ORDERED that Applicant have and recover of and against Defendant, Judgment in the additional sum of \$_____ as additional attorney fees for the presentation of this motion.

The Receiver has the authority to issue subpoenas for the production of documents to the defendant and to third parties.

The Receiver **is / is not** ordered to post bond in the amount of \$_____ payable to this Court and conditioned upon his faithful discharge of his duties in accordance with this Order. The Clerk may accept a check from the receiver or the applicant's attorney's firm for the bond, costs, and other deposits. The receiver's fee is 25% of all proceeds coming into his possession, which the Court finds to be the customary and usual fee for a turnover receiver. The receiver's fee is taxed as a cost against the defendant. All filing fees for the receiver are waived. The Receiver is further ordered to take the oath of his office.

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

Receiver to Hold Property: Receiver must not disburse funds to Judgment Creditor or sell property within 14 days after serving Judgment Debtor with the Notice of Protected Property Rights, the Instructions for Protected Property Claim Form, and the Protected Property Claim Form approved by the Supreme Court, or within 17 days if service was by mail. If the Judgment Debtor asserts an exemption, Receiver may only disburse funds to Judgment Creditor or sell property with Judgment Debtor's written consent or a court order.

SIGNED this _____ day of _____, [YEAR].

[name], JUDGE PRESIDING

APPROVED AS TO FORM:
[FORWARDING ATTORNEY]

BY: _____
[ATTORNEY]
[State Bar No.]
PLAINTIFF'S ATTORNEY

**EXHIBIT A TO RECEIVERSHIP ORDER
DOCUMENTS TO BE TURNED OVER TO RECEIVER**

All records, as hereinafter described, concerning affairs of Defendant; unless otherwise noted, for the preceding 36 months:

1. bank statements; pass books and other bank or financial institution records;

2. federal income and state franchise tax returns;
3. all motor vehicle Certificates of Title (preceding 72 months);
4. real property deeds and deeds of trust (preceding 10 years);
5. business journals, ledgers, accounts payable and receivable files;
6. state sales tax reports;
7. credit applications and other documents stating debtor's financial condition (preceding 72 months).

APPENDIX 2
Order Appointing Receiver And To Compel Discovery – Corporate

[case style]

ORDER APPOINTING RECEIVER AND TO COMPEL DISCOVERY-CORPORATE

CAME ON to be heard the Application for Turnover After Judgment of [Plaintiff] (herein “Applicant”); whereupon, the Court, after review of the papers herein on file, became of the opinion that a Receiver should be appointed to take possession of and sell the leviable assets of [Defendant’s Name]. Respondent refers to [name of officer of defendant], an officer of the Defendant. Based on the pleadings, the judgment, the evidence, and the papers on file in this cause, the Court finds that the defendant owns non-exempt property.

IT IS THEREFORE ORDERED that **Michael S. Bernstein, whose address is 416 S. Third Street, Garland Texas 75040-6426 (telephone number 972 / 271-2700, fax number 972 / 271-1818; email mike@dallasreceiver.com) be, and he is hereby appointed Receiver** in this case pursuant to the Texas Turnover Statute with the power and authority to take possession of and sell all leviable property of Defendant through a private or public sale, including, but not limited to the following non-exempt property: (1) all documents or records, including financial records, related to such property that is in the actual or constructive possession or control of the Defendant; (2) all financial accounts (bank accounts), certificates of deposit, money-market accounts, accounts held by any third party; (3) all securities; (4) all real property, equipment, vehicles, boats, and planes; (5) all safety deposit boxes or vaults; (6) all cash; (7) all negotiable instruments, including promissory notes, drafts, and checks; (8) causes of action, choses of action, and judgments; (9) contract rights, whether present or future; (10) accounts receivable and (11) intangible property and property rights, including but not limited to intellectual property rights such as internet domains, patents, copyrights and trademarks; and that all such property shall be held in custodia legis of said Receiver as of the date of this Order.

Respondent is **ORDERED** to turnover to the Receiver within five (5) days from Respondent’s receipt of a copy of this Order: 1) the documents contained on **Exhibit “A”** attached hereto, together with all documents and financial records which may be requested by the Receiver; 2) all checks, cash securities (stocks and bonds), promissory notes, documents of title, and contracts owned by or in the name of Defendant.

Respondent is **ORDERED** to continue, until the Judgment in this cause is fully paid, to turnover to the Receiver at the Receiver's address all checks, cash, securities, promissory notes, documents of title, and contracts within three (3) days from Defendant's receipt of such property.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority, and power to: 1) collect all accounts receivable of Defendant and all rents due to the Defendant from any tenant; 2) change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the defendant; redirect the delivery of any mail addressed to the defendant or any business of the defendant, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Defendant, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Defendant; 6) hire any person or company to move and store the property of Defendant; 7) insure any property belonging to the Defendant (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendant; 9) obtain from any landlord, building owner or building manager where the Defendant or the Defendant's business is a tenant, copies of the Defendant's lease, lease application, credit application, payment history and copies of Defendant's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Defendant may be situated, and to review and obtain copies of all documents related to same; 12) negotiate and obtain installment payment agreements with Defendant, if the receiver reasonably believes that a payment agreement is the best option to satisfy the judgment and the receiver does not compromise any amounts awarded in the judgment without the plaintiff's authorization; and 13) certify copies of this Order.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority and power to request and obtain from providers of utilities, telecommunications, telephone, cell phone, cable, internet, data services, internet website hosts, satellite television services, and all similar services, (including Time Warner, Spectrum, Frontier, AT&T, Verizon, Sprint, Satellite TV, Direct TV, EV1, Google, Yahoo, and internet blogs and chat rooms) the production of any information regarding the defendant's payments, payment history and financial information, including account information, telephone numbers, names, service addresses, telephone numbers, IP addresses, call detail records, payment records, and bank and credit card information. This Order serves as the court

order required by 47 USC § 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer.

The Receiver shall have the power and authority to take control of Defendant's website by transferring Defendant's domain names to the receiver's Domain name management account. This Order specifically serves as the court order required by Section 3(b) of the ICANN Uniform Domain Name Dispute Resolution Policy, and satisfies all obligations of the Receiver to obtain and receive a court order prior to changing and transferring the domain name registrations in Defendant's names.

All Sheriffs or Constables, and their deputies, and all other peace officers are hereby directed and ordered to assist the Receiver in carrying out his duties and exercising his powers hereunder, without the necessity of a writ of execution, and prevent any person from interfering with the Receiver in taking control and possession of the property of Defendant. The Receiver is authorized to have a Writ of Execution issued and to direct any Constable or Sheriff to seize and sell property under the writ.

[[If discovery was served and not answered]] It is further **ORDERED** that Respondent shall fully answer and serve upon the receiver and the applicant, within 30 days, post judgment interrogatories previously served by the applicant on the defendant.

The Receiver has the authority to issue subpoenas for the production of documents to the defendant and to third parties.

It is further ORDERED that Applicant have and recover of and against Defendant, Judgment in the additional sum of \$_____ as additional fees for the presentation of this motion.

The Receiver **is / is not** ordered to post bond in the amount of \$_____ payable to this Court and conditioned upon his faithful discharge of his duties in accordance with this Order. The Clerk may accept a check from the receiver or the applicant's attorney's firm for the bond, costs and other deposits. The receiver's fee is 25% of all proceeds coming into his possession, which the Court finds to be the customary and usual fee for a turnover receiver. The receiver's fees and expenses are taxed as costs against the Defendant. All filing fees for the receiver are waived. The Receiver is further ordered to take the oath of his office.

SIGNED this _____ day of _____, [YEAR].

[Name], JUDGE PRESIDING

APPROVED AS TO FORM:
[FORWARDING ATTORNEY]

BY: _____
[ATTORNEY]
[State Bar No.]
PLAINTIFF'S ATTORNEY

**EXHIBIT A TO RECEIVERSHIP ORDER
DOCUMENTS TO BE TURNED OVER TO RECEIVER**

All records, as hereinafter described, concerning affairs of Defendant; unless otherwise noted, for the preceding 36 months:

1. bank statements; pass books and other bank or financial institution records;
2. federal income and state franchise tax returns;
3. all motor vehicle Certificates of Title (preceding 72 months);
4. real property deeds and deeds of trust (preceding 10 years);
5. business journals, ledgers, accounts payable and receivable files;
6. state sales tax reports;
7. credit applications and other documents stating debtor's financial condition (preceding 72 months);
8. Beneficial Ownership Information Report (BOIR) filed with the US Department of Treasury under the Corporate Transparency Act.

APPENDIX 3
Order Appointing Receiver And To Compel Discovery – Individual and Corporate Defendants

[COURT HEADING]

ORDER APPOINTING RECEIVER AND TO COMPEL DISCOVERY- INDIVIDUAL AND CORPORATE DEFENDANTS

CAME ON to be heard the [[Title of the application for receivership]] of [[**Plaintiff's name**]] (herein “Applicant”); whereupon, the Court, after review of the papers on file in this cause, became of the opinion that a Receiver should be appointed to take possession of and sell the leviable assets of [[**name of each corp defendant**]] and the non-exempt assets of [[**name of individual defendant**]] (herein “Defendant or Defendants”). Respondent refers to [[insert name of an officer of the corporate defendant]], an officer of the defendant [[name of the corporate defendant]]. Based on the pleadings, the judgment, the evidence, and the papers on file in this cause, the Court finds that the defendants each own non-exempt property. Notwithstanding any contrary language herein, this order does not compel turnover of a natural person’s homestead, or checks for current wages or other exempt property.

IT IS THEREFORE ORDERED that **Michael S. Bernstein, whose address is 416 S. Third Street, Garland, Texas 75040-6426 (telephone number (972) 271-2700; fax (972) 271-1818; email mike@dallasreceiver.com) be, and he is hereby appointed Receiver** in this case pursuant to the Texas Turnover Statute with the power and authority to take possession of and sell all non-exempt property of the Defendants through a private or public sale, including, but not limited to the following non-exempt property: (1) all documents or records, including financial records, related to such property that is in the actual or constructive possession or control of the Defendant; (2) all financial accounts (bank account), certificates of deposit, money-market accounts, accounts held by any third party; (3) all securities; (4) all real property, equipment, vehicles, boats, and planes; (5) all safety deposit boxes or vaults; (6) all cash; (7) all negotiable instruments, including promissory notes, drafts, and checks; (8) causes of action, choses of action, and judgments; (9) contract rights, whether present or future; (10) accounts receivable and (11) intangible property and property rights, including but not limited to intellectual property rights such as internet domains, patents, copyrights and trademarks; and that all such property shall be held in custodia legis of said Receiver as of the date of this Order.

Each Defendant and Respondent for a Defendant is **ORDERED** to turnover to the Receiver within five (5) days from receipt of a copy of this Order: 1) the documents contained on **Exhibit "A"** attached hereto, together with all documents and financial records which may be requested by the Receiver; 2) all checks, cash, securities (stocks and bonds), promissory notes, documents of title, and contracts owned by or in the name of Defendant;

Each Defendant and Respondent is **ORDERED** to identify to the receiver all interests of the defendant in any business or venture.

This ORDER constitutes a Charging Order under the Texas Business Organizations Code. This order constitutes a lien upon the judgment debtor's partnership interest in any partnership and the judgment debtor's membership interest in any limited liability company. The receiver has the right to receive any distribution to which the judgment debtor would be entitled from the debtor's partnership or membership interest.

Each Defendant is **ORDERED** to continue, until the Judgment in this cause is fully paid, to turnover to the Receiver at the Receiver's address all checks, cash, securities, promissory notes, documents of title, and contracts within three (3) days from the Defendant's receipt of such property. Paychecks for current wages are exempt from this order.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority, and power to: 1) collect all accounts receivable of Defendant and all rents due to the Defendant from any tenant; 2) change locks to all premises, except the homestead, at which any property is situated; 3) direct the delivery of Defendant's mail and the mail of any business of the defendant to the Receiver's address and open all mail directed to Defendant and any business of the defendant; 4) endorse and cash all checks and negotiable instruments payable to Defendant, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Defendant; 6) hire any person or company to move and store the property of Defendant; 7) (but not the obligation) to insure any property belonging to the Defendant; 8) obtain from any financial institution, bank, credit union, credit bureau, savings and loan, title company, or any other third party, any financial records, including credit reports or credit information belonging to or pertaining to the Defendant; 9) obtain from any landlord, building owner or building manager where the Defendant or the Defendant's business is a tenant copies of the Defendant's lease, lease application, credit application, payment history and copies of Defendant's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Defendant

may be situated, and to review and obtain copies of all documents related to same; 12) negotiate and obtain installment payment agreements with Defendant, if the receiver reasonably believes that a payment agreement is the best option to satisfy the judgment and the receiver does not compromise any amounts awarded in the judgment without the plaintiff's authorization; and 13) certify copies of this Order.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority and power to request and obtain from providers of utilities, telecommunications, telephone, cell phone, cable, internet, data services, internet website hosts, satellite television services, and all similar services, (including Time Warner / Spectrum, Frontier, AT&T, Verizon, Sprint, Satellite TV, Direct TV, EV1, Google, Yahoo, and internet blogs and chat rooms) the production of any information regarding the defendant's payments, payment history and financial information, including account information, telephone numbers, names, service addresses, telephone numbers, IP addresses, call detail records, payment records, and bank and credit card information. This Order serves as the court order required by 47 USC § 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer.

The Receiver shall have the power and authority to take control of Defendant's website by transferring Defendant's domain names to the receiver's Domain name management account. This Order specifically serves as the court order required by Section 3(b) of the ICANN Uniform Domain Name Dispute Resolution Policy, and satisfies all obligations of the Receiver to obtain and receive a court order prior to changing and transferring the domain name registrations in Defendant's names.

All Sheriffs or Constables, and their deputies, and all other peace officers, are hereby ordered to assist the Receiver in carrying out his duties and exercising his powers hereunder and prevent any person from interfering with the Receiver in taking control and possession of the property of Defendant, without the necessity of a Writ of Execution. The Receiver is authorized to have a writ of execution issued and to direct any Constable or Sheriff to seize and sell property under the writ.

[[IF DISCOVERY WAS SERVED AND UNANSWERED]] Discovery: It is further, **ORDERED** that Defendant shall fully answer and serve upon the receiver and the applicant, within 30 days, post judgment interrogatories previously served by the applicant on the defendant.

The Receiver has the authority to issue subpoenas for the production of documents to the defendants and to third parties.

Attorney Fees: It is further ORDERED that Applicant have and recover of and against Defendant, Judgment in the additional sum of \$_____ as additional attorney fees for the presentation of this motion.

Bond; Receiver's Fee: The Receiver **is / is not** ordered to post bond in the amount of \$_____ payable to this Court and conditioned upon his faithful discharge of his duties in accordance with this Order. The Clerk may accept a check from the receiver or the applicant's attorney's firm for the bond, costs and other deposits. The receiver's fee is 25% of all proceeds coming into his possession, which the Court finds to be the customary and usual fee for a turnover receiver. The receiver's fee is taxed as a cost against the defendant. All filing fees for the receiver are waived. The Receiver is further ordered to take the oath of his office.

As to judgment-debtors who are individuals:

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

Receiver to Hold Property: Receiver must not disburse funds to Judgment Creditor or sell property within 14 days after serving Judgment Debtor with the Notice of Protected Property Rights, the Instructions for Protected Property Claim Form, and the Protected Property Claim Form approved by the Supreme Court, or within 17 days if service was by mail. If the Judgment Debtor asserts an exemption, Receiver may only disburse funds to Judgment Creditor or sell property with Judgment Debtor's written consent or a court order.

SIGNED this _____ day of _____, [YEAR].

[[name]], JUDGE PRESIDING

APPROVED AS TO FORM:
[FORWARDING ATTORNEY]

BY: _____
[[ATTORNEY]]
[[State Bar No.]]
PLAINTIFF'S ATTORNEY

**EXHIBIT A TO RECEIVERSHIP ORDER
DOCUMENTS TO BE TURNED OVER TO RECEIVER**

All records, as hereinafter described, concerning affairs of Defendant; unless otherwise noted, for the preceding 36 months:

8. bank statements; pass books and other bank or financial institution records;
9. federal income and state franchise tax returns;
10. all motor vehicle Certificates of Title (preceding 72 months);
11. real property deeds and deeds of trust (preceding 10 years);
12. business journals, ledgers, accounts payable and receivable files;
13. state sales tax reports;
14. credit applications and other documents stating debtor's financial condition (preceding 72 months);
15. If a corporate or LLC defendant: Beneficial Ownership Information Report (BOIR) filed with the US Department of Treasury under the Corporate Transparency Act.

APPENDIX 4
RECEIVERSHIP APPLICATION

With thanks to Blenden Roth Law Firm

[court heading]

**MOTION FOR POST-JUDGMENT RECEIVERSHIP PURSUANT TO
SECTION 31.002, CIVIL PRACTICE AND REMEDIES CODE**

1. Plaintiff has obtained a judgment against Defendant in this cause. The judgment is dated [[insert date of judgment]], and is in the amount of approximately \$ XXXX.YY . The judgment is final, has not been superseded, and remains fully payable. A copy of the judgment is attached as Exhibit A. Attached as Exhibit B is a copy of Section 31.002, Civil Practice and Remedies Code (herein §31.002) upon which this motion is based.

2. A trial court has an affirmative duty to enforce its judgment. Tex. R. CIV. P. 308; *In Re Crow-Billingsley Air Park Ltd*, 98 S.W.3d 178 (Tex. 2003). §31.002 (a) specifically provides that, “A judgment creditor is entitled to aid from a court of appropriate jurisdiction...” and §31.002 (b) (3) provides for the appointment of a receiver to collect the debt. The defendant has not paid the judgment; the defendant owns property, including present or future rights to property, which is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

3. The turnover statute is meant to be open ended in that it allows a judgment creditor to get aid in collection from the Court in the form of an order which requires the debtor to bring to the Court all documents or property used to satisfy a judgment. The burden is on the debtor to produce such documents and property. *Beaumont Bank N.A. v. Buller*, 806 S.W.2d, 233, 226 (Tex. 1991); Tex. Civ. Prac. & Rem. Code §31.002 (h). Therefore, the debtor should be ordered to identify and produce such documents and property.

4. Accordingly, Plaintiff requests the Court order Defendant to turn over all nonexempt property that is in the defendant's possession or subject to the defendant's control, together with all documents related to the property, to a receiver with the authority to take possession of the nonexempt property, sell it and pay the proceeds to the plaintiff to the extent required to satisfy the judgment, including the fees and costs of the receiver.
5. Plaintiff further moves the Court to appoint a receiver pursuant to §31.002 (b) (3), to take possession of the nonexempt assets and documents related to the assets, sell the assets and apply the proceeds from the sale to satisfy the judgment, including the receiver's fee and costs. Plaintiff requests this court to appoint Mike Bernstein, whose address is 416 S. Third Street, Garland, Texas 75040, (telephone number (972) 271-2700; fax (972) 271-1818) as Receiver. Mr. Bernstein has extensive experience as a receiver in turnover matters.
6. Plaintiff requests that the Court award its attorney's fees, expenses and costs in the amount of \$500.00 for preparing, filing and arguing the motion and obtaining an order. Under §31.002 (e), the judgment creditor is entitled to recover reasonable costs, including attorney's fees.
7. **No Bond.** Plaintiff requests that no bond be ordered for the receiver as none is required for a turnover receivership. *Childre v. Great Sw. Life Ins. Co.*, 700 S.W. 2d 284, 289 (Tex. App.—Dallas 1985, no writ).

[If proceeding *ex parte*]

8. **Ex Parte relief Requested.** When a judgment debtor is likely to dispose of property if notice and a hearing are given, the Court may enter a turnover order on an *ex parte* basis. *Ex Parte Johnson*, 654 S.W.2d. 415, 418 (Tex. 1983) (stating that notice and a hearing prior to the issuance of a turnover order are not required); accord *Thomas v. Thomas*, 975 S.W.2d 63, 69 (Tex.App.—Waco 1996, no writ) (issuing an *ex parte* turnover order does not compromise constitutional principles). *Ex parte* post-judgment collection proceedings do not compromise due process principles because the judgment puts

the debtor on notice that post judgment proceedings will follow. *Sivley v. Sivley and Sivley*, 972 S.W.2d 850 (Tex.App.—Tyler, 1998, no pet.), accord *Endicott--Johnson Corporation v. Encyclopedia Press*, 266 U.S. 285, 288--290, 45 S.Ct. 61, 69 L.Ed. 288 (1924).

9. Plaintiff believes that good cause exists for the granting of this application on an *ex parte* basis to avoid giving the defendant the opportunity to alienate, transfer, hide, or dispose of non-exempt property before the receiver can take possession.

Wherefore, Plaintiff respectfully requests that the court appoint a receiver to collect the judgment in this case, award attorney's fees, and provide for the payment of fees and costs to the receiver.

[Omit certificate of service and fiat if proceeding *ex parte*. Check local rules.]

CERTIFICATE OF SERVICE

I certify that a true copy of this Motion with all attachments were forwarded to the Defendant through its attorney, _____, [[by facsimile transmission at [[insert fax number]] or [[via email to the Defendant through its attorney, _____, {insert email address}]] before 5:00 p.m. as provided by the Rules on [[insert date]].

Respectfully Submitted,

[signature block]

FIAT

It is ordered that a hearing on this motion is set for March 3, 2024 at _____ a.m. / p.m.

SIGNED on _____
Judge Presiding

APPENDIX 5
Receivership Application In A New Court – Corporate Defendant

Receivership Application In A New Court – Corporate Defendant

With thanks to Peter Ruggero

CAUSE NO. _____

ACME CREDITOR CO, INC.	§	IN THE COUNTY COURT
	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	AT LAW NO. ____ OF
	§	
Wile E. Coyote Co, Inc.	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

**APPLICATION FOR POST-JUDGMENT
TURNOVER AND APPOINTMENT OF RECEIVER**

Acme Creditor Co., Inc. (“Plaintiff”), plaintiff and judgment creditor in cause number D-1-GN-18-001234 styled *Acme Creditor Co, Inc. v. Wile E. Coyote Co., Inc.* in the 53rd Judicial District Court of Travis County, Texas, requests that the Court grant this Application for Turnover Relief and Appointment of a Receiver against Wile E. Coyote Co, Inc. (“Defendant”).

1. **Judgment.** On March 28, 2018, a final judgment was entered favor of Plaintiff and against Defendant for \$104,700.51, plus interest and costs, in Cause No. 1-GN-18-001234 in the 53rd Judicial District Court of Travis County, Texas. A copy of the judgment is attached as **Exhibit A**.
2. Plaintiff brings this independent action pursuant to pursuant to Tex. Civ. Prac. & Rem. Code § 31.002(d) that provides: “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.”
3. **Turnover and Appointment of Receiver.** Chapter 31 of the Texas Civil Practice and Remedies Code provides that “A judgment creditor is entitled to aid from a court of appropriate jurisdiction, including a justice court, 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 is not exempt from attachment, execution, or seizure for the satisfaction of liabilities. Tex. Civ. Prac. & Rem. Code § 31.002(a).

4. The court may “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.” *Id.* § 31.002(b).

5. The turnover statute is meant to be open ended in that it allows a judgment creditor to get aid in collection from the Court in the form of an order which requires the debtor to bring to the Court all documents or property used to satisfy a judgment. The burden is on the debtor to produce such documents and property. *Beaumont Bank N.A. v. Buller*, 806 S.W.2d, 233, 226 (Tex. 1991); Tex. Civ. Prac. & Rem. Code § 31.002 (h).

6. Property. Defendant is an entity and thus it has no exemptions. Defendant has non-exempt property that can be used to satisfy the judgment.

7. Turnover and Receiver. Plaintiff requests that Defendant turnover all non-exempt property and appoint Mike Bernstein as Receiver. Mr. Bernstein has extensive experience as receiver in turnover matters. Plaintiff requests no bond be required. *Childre v. Great Sw. Life Ins. Co.*, 700 S.W. 2d 284, 289 (Tex. App.—Dallas 1985, no writ).

8. Ex Parte Relief. The granting of turnover and appointment of a receiver is allowed on an ex parte basis with no prior notice to a judgment debtor. *Thomas v. Thomas*, 917 S.W.2d 425, 433-34 (Tex.App.—Waco 1996, no writ) (“[F]ailure to provide prior notice and hearing before the issuance of a turnover order under § 31.002 does not compromise constitutional principles. Section 31.002 provides a remedy which allows the trial court to enforce a prior order that has been refused or disobeyed. The judgment against [defendant] was subject to collection, and notice can be implied that the creditor would attempt to collect on the judgment.”).

Wherefore, Plaintiff respectfully requests that the Court grant this application, order turnover of Defendant’s non-exempt property, appoint Mike Bernstein as receiver, award Plaintiff reasonable attorneys’ fees and expenses, and grant all further relief to which Plaintiff may be entitled.

Respectfully Submitted,

[SIGNATURE BLOCK]

**ATTORNEY FOR PLAINTIFF
ACME CREDITOR CO., INC.**

APPENDIX 6

U.S. POSTAL SERVICE MANUAL EXCERPT

The United States Postal Service's Domestic Mail Manual 508, Recipient Services, provides:

1.5 Delivery to Individual At Organization

1.5.1 To Address

All mail addressed to a governmental or nongovernmental organization or to an individual by name or title at the address of the organization is delivered to the organization, as is similarly addressed mail for former officials, employees, contractors, agents, etc. *If disagreement arises where any such mail should be delivered, it must be delivered under the order of the organization's president or equivalent official.* (Italics added).

Domestic Mail Manual, as published online as of March 19, 2023 at
<https://pe.usps.com/text/dmm300/508.htm#ep1132464>

APPENDIX 7

BONUS FEATURE: TAKING POSSESSION OF DOMAIN NAMES

When you register a domain name, the contact information for your domain name registration is included in a public database known as WHOIS. You can look up who owns the domain name at any whois utility. Any registrar will have a whois look up utility. One is <http://www.networksolutions.com/whois/>.

Enter the domain name (anyname.com, anyname.net, etc) and it will show you who owns the domain name and who the REGISTRAR is. The registrar is the provider of the domain name. Some services block the domain owner's identifying information, so you would have to get it from the registrar directly.

The registrar will be able to provide the login credentials (username and password) for accessing the Domain Name. Once you have the login credentials you can upload a new web page for the debtor. You can access email going to anyone @ the_Domain_Name . You can forward the Email to any address you like. There may be extra charges for the Email forwarding, but the cost is nominal.

Every computer on the internet has its own unique IP (Internet Protocol) .address, so it can be found. The IP address looks like 192.0.34.65 . The Domain Name System (DNS) links domain names to the IP addresses, so you can use the name instead of the address. It is much easier to use ICANN.ORG than 192.0.34.65. When you type in www.icann.org, the DNS looks up the address and routes you to 192.0.34.65. Once you have control over the domain name, you can assign the name to an IP address of your choosing. For example, you could route internet traffic intended for www.your-defendant.com over to www.receivers-website.com . You change the address that the name is linked to. In one case, I hired a company in the business of managing internet companies to manage a company that had a large presence on the web. The managing company re-routed traffic for the defendant's website to its own website, where it could handle the tech support issues and service the defendant's customers.

Depending on the domain name, there may be some value to selling it. A name like Lawyer.com is going to be more sought after than SamSmith.com. However, you might be able to find another SamSmith company and see if they want to buy the domain name.

Tip: If you have to tell someone how to correctly spell the domain name, it is probably not valuable. For example, in Houses4Sale.com, you'd have to explain that it is spelled with a 4, not "four" or "for". Three letter domains are said to be valuable. For example, ABC.com.

Tip: Domain names are not really bought and sold. They are leased. The lease expires if not timely renewed. The whois lookup will tell you when the domain name is set to expire. If you or the owner let the name expire, it goes up for grabs at an auction. If you think you might want to get turnover of someone's domain and the domain name expires soon, consider paying the registrar for another year. The cost will only be around \$20.00 or \$30.00.

A domain name is not exempt. It is not one of the types of exempt property listed in §42.002 of the Texas Property Code. It is not a tool, piece of equipment, book or apparatus used in a trade or profession under §42.002(a)(4). *Restrepo and Restrepo v. Alliance Riggers & Constructors, Ltd* (Tex.App.--El Paso September 22, 2017, no pet.)

APPENDIX 8

BONUS FEATURE: HOW TO FIND THE BANK ACCOUNT

How To Find The Bank Account (Besides through discovery to the debtor)

Some of these will work without a receiver, some won't. Each of these has worked for me at least once.

- ❖ Check their website. Debtors who do a lot of internet business may have their wiring instructions posted.
- ❖ Try a subpoena against some of these non-parties who have recently received a check from the debtor (Tex. R. Civ. Proc. 205 & 621a):

The auto finance company

The landlord

The mortgage lender

If the mortgage is serviced through MERS, surf to www.mers-servicerid.org to find out who the lender is!

Better yet, have a receiver do it. The receiver is proceeding "in the shoes" of the defendant, not under 205 & 621a. The receiver doesn't have to put the defendant on notice!

- ❖ Make a purchase and pay with a check. This tip may be obsolete, but it might still work on some debtors.
- ❖ Ask them! While you are at the store, anonymously making your purchase, ask the clerk where the store does its banking. It doesn't hurt to ask.
- ❖ If the defendant has disclosed a loan, the receiver can talk to the lender. If the defendant does not bank there, sometimes the receiver can find out what bank the debtor's checks are drawn on.
- ❖ Some asset reports have a section called "business associations". This section contains a list of lenders, probably taken from UCC filings against the debtor. If the listing shows a bank, the defendant may have an account there. This is a long shot-- the information is often stale, but sometimes it is worth a try.
- ❖ The receiver goes to the defendant's location with a constable. The receiver looks through the desk for the check book while the constable keeps the peace. The cost is the constable's standard writ fee.
- ❖ Seize and look through the defendant's mail. (Receivership order allowing it is required.)
- ❖ If the defendant is getting interest from an investment account, the brokerage house will be listed on the defendant's federal tax return.

**APPENDIX 9
CHAPTER 64 DOES NOT APPLY**

COMMENTS

CPRC CHAPTER 64: RECEIVERSHIP (WEST 2008)

	SUBCHAPTER A. GENERAL PROVISIONS
<p>The substance dates from 1887 & 1889; Art. 2293. Re-formatted & reworded in 1985,</p> <p>Sub (a)(2) is from Art. 2293, and could not be referring to a post judgment proceeding.</p> <p>“... in an action...” – this is prejudgment language.</p> <p>The applicant must have a probable interest in the property – these are not post judgment issues.</p> <p style="text-align: center;">❖</p> <p>§64.001 is the gateway into Ch. 64. None of the other provisions should be applied to turnover, because you can’t get past this section</p> <p style="text-align: center;">❖</p>	<p style="text-align: center;">§ 64.001. AVAILABILITY OF REMEDY.</p> <p>(a) A court of competent jurisdiction may appoint a receiver:</p> <p>(1) in an action by a vendor to vacate a fraudulent purchase of property;</p> <p>(2) in an action by a creditor to subject any property or fund to his claim;</p> <p>(3) in an action between partners or others jointly owning or interested in any property or fund;</p> <p>(4) in an action by a mortgagee for the foreclosure of the mortgage and sale of the mortgaged property;</p> <p>(5) for a corporation that is insolvent, is in imminent danger of insolvency, has been dissolved, or has forfeited its corporate rights; or</p> <p>(6) in any other case in which a receiver may be appointed under the rules of equity.</p> <p>(b) Under Subsection (a)(1), (2), or (3), the receiver may be appointed on the application of the plaintiff in the action or another party. The party must have a probable interest in or right to the property or fund, and the property or fund must be in danger of being lost, removed, or materially injured.</p> <p>(c) Under Subsection (a)(4), the court may appoint a receiver only if:</p> <p>(1) it appears that the mortgaged property is in danger of being lost, removed, or materially injured; or</p> <p>(2) the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt.</p>
<p>Sub (d) has to do with missing persons, not applicable to our discussion, except to underscore that Ch. 64 does not have anything to do with § 31.002.</p>	<p>d) A court having family law jurisdiction or a probate court located in the county in which a missing person. . . .</p> <p>Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1376, § 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1081, § 1, 3, eff. Sept. 1, 1999.</p>

Note: This analysis has been done for the rest of Chapter 64. Email me if you’d like a copy of the whole analysis.

**APPENDIX 10
SAMPLE RECEIVER'S BOND**

<p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">Defendant</p>	<p style="text-align: center;">No.</p> <p style="text-align: center;">IN THE COUNTY</p> <p style="text-align: center;">COURT AT LAW NUMBER 000</p> <p style="text-align: center;">DALLAS COUNTY, TEXAS</p>
--	--

BOND OF RECEIVER

1. _____ has been appointed receiver in the above styled and numbered cause. The order appointing him requires that he execute a bond in the amount of \$xx.yy.
2. Therefore, I, _____, Receiver, as principal, hereby acknowledge myself bound to pay to the judge of the court the sum of _____ which amount has been tendered in cash, conditioned that said Receiver will faithfully discharge his duty as receiver in the above styled and numbered cause and obey the orders of the court therein.

SIGNED, this ____ day of _____, 2024.

[name], Receiver

Filed and Approved this _____ day of _____, 2009

Clerk

[Note: It is silly to have space on the form for the clerk to “approve” a cash bond, but if this isn’t on the form some clerks will reject it.]

[Note: The Dallas District Clerk requires a \$4.00 “bond approval fee”-- even on cash bonds. The bond approval fee must be paid with a separate check.]

**APPENDIX 11
RECEIVER'S OATH**

No.

In The County Court

At Law Number ?? Of

Dallas County, Texas

Plaintiff

vs.

Defendant

OATH OF RECEIVER

I solemnly swear that I will faithfully perform and discharge the duties of receiver in this cause and will obey the orders of the Court. I further swear that I am a qualified voter of the State of Texas and am in fact registered to vote. My actual residence is within the State of Texas. I further swear that I am not a party, attorney or other person interested in the action giving rise to the judgment that is the basis for the appointment of a receiver.

Michael S. Bernstein
Receiver

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I certify under my seal of office this ___ day of _____, 2013, that Michael S. Bernstein personally appeared before me, the undersigned Notary Public and signed the foregoing statement in writing before me and swore before me that the facts therein stated are true and correct.

Notary Public in and for
The State of Texas

Filed with the Court on _____, 2024.

John F. Warren, Clerk

Deputy Clerk

APPENDIX 12

Plaintiff's Post-Judgment Requests for Admission

(With thanks to Blenden Roth Law Firm for allowing me to use their form, which I have edited.)

Answer:

- _____ 1. No reason exists why the judgment in this cause should not be paid by defendant.
- _____ 2. Defendant is indebted to plaintiff in the amount stated in the judgment.
- _____ 3. Plaintiff properly filed and served post-judgment interrogatories on defendant.
- _____ 4. Defendant received the post-judgment interrogatories from plaintiff more than 31 days ago.
- _____ 5. Defendant failed to answer post-judgment interrogatories within 31 days of service of same.
- _____ 6. Defendant has no valid reason or excuse for failing to answer the post-judgment interrogatories.
- _____ 7. Defendant refuses to answer the post-judgment interrogatories in order to conceal assets from levy.
- _____ 8. Defendant consents to the appointment of Michael Bernstein as receiver in this case.
- _____ 9. No exemptions are claimed as to any property owned by the defendant.
- _____ 10. Defendant owns collectable accounts receivable.
- _____ 11. Defendant continues to generate business revenue.
- _____ 12. Defendant owns stock.
- _____ 13. The stock referred to in the preceding request is not exempt from attachment, execution, or seizure.
- _____ 14. Defendant has an active bank account.
- _____ 15. The bank account referred to in the preceding is not a trust account.
- _____ 16. Defendant has sufficient net worth to pay the judgment.
- _____ 17. Defendant has the ability to pay the judgment, but has chosen not to pay.
- _____ 18. Defendant owns real property, other than a homestead, which is sufficient to satisfy the judgment.
- _____ 19. No exemption is claimed as to the real property referred to in the preceding request.
- _____ 20. Defendant owns personal property.
- _____ 21. Defendant does not claim an exemption to the personal property referred to in the preceding request.
- _____ 22. Though plaintiff has attempted to obtain payment of the judgment, Defendant has refused to discuss payment either by lump-sum payment or by installment payments.

[When editing, bear in mind that admissions should state facts, not conclusions.]

APPENDIX 13 LEGISLATIVE INTENT

Texas Civil Practice & Remedies Code § 31.002 Subsection (h)

BILL ANALYSIS

Senate Research Center
79R3276 MFC-D

H.B. 729
By: Nixon (Janek)
Jurisprudence
4/2/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently there is a loophole in the law that allows debtors to hide some of their assets within the turnover statute. The turnover statute is a post-judgment remedy enacted to shift the burden of disclosure of assets from the judgment-creditor to the judgment-debtor. The turnover goal is to force the debtor to disclose the assets he or she owns, that are not exempt by law, to be used towards payment.

However, at least two lower court decisions appear to require property subject to turnover to a court-appointed receiver to be specifically identified by the creditor in the application for a turnover order. The rulings make the turnover procedure ineffective in that the debtor is advised in the turnover application what property the receiver intends to take possession of and gives the debtor an opportunity to dispose of the property even before a receiver can be appointed. Furthermore, in the event specific assets are unknown at the time of the application to the court, a creditor would be precluded from utilizing the statute.

As proposed, H.B. 729 clarifies that a court may enter or enforce an order that requires the turnover of non-exempt property without identifying the specific property subject to turnover.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.002, Civil Practice and Remedies Code, by adding Subsection (h) to authorize a court to enter or enforce an order under this section that requires the turnover of non-exempt property without identifying in the order the specific property subject to turnover.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2005.

BILL ANALYSIS

H.B. 729
By: Nixon
Civil Practices
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The turnover statute is a postjudgment remedy enacted to shift the burden of disclosure of assets from the judgment-creditor to the judgment-debtor. At least two lower court decisions appear to require property subject to turnover to a Court Appointed Receiver to be specifically identified by the creditor in the application for a turnover order. The rulings make the turnover procedure ineffective in that the debtor is advised in the turnover application what property the Receiver intends to take possession of and gives the debtor an opportunity to dispose of the property even before a Receiver can be appointed. Further, in the event specific assets are unknown at the time of the application to the court, a creditor would be precluded from utilizing the statute.

HB 729 clarifies that a court may enter or enforce an order that requires the turnover of non-exempt property without identifying the specific property subject to turnover.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

HB 729 amends Section 31.002, Civil Practice and Remedies Code, by adding Subsection (h) to state that a court may enter or enforce an order under this section that requires the turnover of non-exempt property without identifying in the order the specific property subject to turnover.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

APPENDIX 14 HARSH / DRASTIC REMEDY HANDOUT

The Turnover Receivership is NOT a Harsh or Drastic Remedy

The “harsh remedy” case law does not apply to a turnover receivership. The cases you hear about either date from before the turnover statute (enacted in 1979) or are about any of the several other kinds of receiverships.

The case law actually goes the other way. The turnover receivership is meant to be an available remedy, for even the smallest of cases. *Childre v. Great Sw. Life Ins. Co.*, 700 S.W. 2d 284 (Tex. App.—Dallas 1985, no writ.). Discussing whether a bond is required for a turnover receivership, *Childre* says that unless the judgment debtor shows extraordinary circumstances,

“... any bond required should not be in an amount that would act as a prohibitive cost or make it economically impossible for the judgment creditor to use the remedies provided in [the turnover statute] for even the smallest of judgments.”

Childre at 289, quoting David Hittner, *Texas Post-Judgment Turnover & Receivership Statutes*, 45 Tex. Bar J. 417, 420 (1982)); *Shultz v. Cadle Co.*, 825 S.W.2d 151, 154-155 (Tex.App.—Dallas 1992, writ denied); *Estate of Herring*, 983 S.W.2d 61 (Tex. App.—Corpus Christi, 1999, no pet.)

The statute’s purpose is to put a reasonable remedy in the hands of a diligent judgment creditor, subject to court supervision. *CRE8 International LLC v Elexis Rice*, 05-14-00377-CV (Tex.App--Dallas June 3, 2015, no pet.)(mem. op.).

My view is that a turnover receivership is usually no more harsh than a writ of execution or a garnishment. In many cases, receivership is actually less harsh because the receiver can release a bank account much more quickly than it would be released under a garnishment.

The idea that receivership is a harsh remedy comes from non-turnover case law. In 2017, I searched at Casemaker for opinions talking about "harsh remedy" or "drastic remedy". 80 opinions came up. They are not turnover receivership cases. Some of these are opinions from before there was a turnover statute. The rest are talking about the many other kinds of receiverships. (There was one opinion out of 80 in a turnover context, but the opinion mentioned "harsh remedy" without any analysis, only referring back to an earlier opinion. That earlier opinion was about a receivership under the Texas Securities Act.)

If the turnover receivership is that harsh or drastic a remedy, the statute and case law would require notice to the defendant at the very least, which they don’t. The cases discussing proceeding *ex parte* do not mention harsh or drastic

remedy. They point out that the judgment debtor has had its day in court and should expect that collection actions will occur.

Further, the legislature amended the turnover statute in June 2017, making it much easier to prove up a receivership. Surely, they would not do that if the “harsh remedy” cases were about a turnover receivership.