

STATUTORY AUTHORITY FOR TRIAL OF RIGHT OF PROPERTY

TEX. PROP. CODE § 25.001. JURISDICTION. A trial of the right of property is an action that applies only to personal property. A trial of the right of property must be tried in a court with jurisdiction of the amount in controversy.

TEX. PROP. CODE § 25.002. DAMAGES. If a claimant in a trial of the right of property does not establish a right to the property, the court shall adjudge damages against the obligors in the claimant's bond equal to 10 percent of the letter of:

- (1) the property's value; or
- (2) the amount claimed under the writ levied against the property.

Yellow Highlighting Denotes New Language from Task Force

Teal Highlighting Denotes SCAC Modifications to Prior Rules

SECTION 8. TRIAL OF RIGHT OF PROPERTY

Rule TRP 1 (680). Verified Application to Obtain Possession of Personal Property

- (a) *Basis for Application.* Whenever a distress warrant or writ of execution, sequestration, attachment, garnishment or other like writ is levied upon personal property, and any portion of the property¹ is claimed by any claimant² who is not a party to the writ, the claimant may file in the court in which such suit is pending an application³ to obtain possession of the personal property.⁴
- (b) *Application.* An application to obtain possession of personal property must:
- (1) state the legal and factual grounds on which the claimant asserts superior right to possession or title to the property as against the plaintiff in the writ or distress warrant⁵;
 - (2) state the value of all property subject to the levy or distress warrant against which the claim is asserted;
 - (3) state that the claim is made in good faith⁶; and

¹ Original language was "... and such property, or any part thereof, . . ."

² Notwithstanding the convention adopted by the Task Force to refer to the proponent of an extraordinary remedy as the "Applicant," the Task Force elected to continue the use of "Claimant" here as it better describes the proponent.

³ Current TEX. R. CIV. P. 717.

⁴ Current TEX. R. CIV. P. 718.

⁵ Current TEX. R. CIV. P. 718.

⁶ Current TEX. R. CIV. P. 717.

- (4) admit or deny each finding of any order directing the issuance of the writ or distress warrant; however, if the claimant is unable to admit or deny any finding, the claimant must set forth the reasons why the claimant cannot admit or deny.⁷
- (c) *Verification.* The application must be ~~verified or~~ supported by affidavit⁸ by one or more persons having personal knowledge of relevant facts that are admissible in evidence; however, facts may be stated based on information and belief if the grounds for belief are specifically stated.
- (d) *Effect of Filing Application.* The filing of the application stays any further proceedings under the writ or distress warrant, except for any orders concerning the care, preservation, or sale of any perishable property, until the claim is tried.⁹
- (e) *Docketing Cause.* The clerk or justice of the peace shall docket the cause in the name of the plaintiff in the writ or distress warrant as the plaintiff, and the claimant of the property as intervening claimant.¹⁰
- (f) *Notification of Officer.* The clerk or justice of the peace shall promptly notify the officer executing the original writ or distress warrant that an application to obtain possession of personal property has been filed.

Rule TRP 2 (681). Preliminary Hearing and Order on Application

- (a) *Preliminary Hearing.*
- (1) Unless the parties agree to an extension of time, the application must be heard promptly, after reasonable notice to the parties (which may be less than three days), and be determined at a preliminary hearing not later than 10 days after it is filed.¹¹
- (2) At the preliminary hearing, the court must determine the amount in controversy based upon the value of the property subject to the claim.
- (3) The application shall not be quashed because two or more grounds are stated conjunctively or disjunctively.¹²
- (4) At the preliminary hearing, the burden of proof is on the claimant to show superior right to possession or title to the property claimed as against the parties to the writ or distress warrant.¹³

⁷ Current TEX. R. CIV. P. 718.

⁸ Current TEX. R. CIV. P. 718 provides “by sworn written motion.”

⁹ Current TEX. R. CIV. P. 718.

¹⁰ Current TEX. R. CIV. P. 723; however, in current rule, docketing does not occur until the bond for the trial of right of property is returned.

¹¹ Current TEX. R. CIV. P. 718.

¹² Current TEX. R. CIV. P. 717.

- (5) The court's determination on the application may be made upon the basis of uncontroverted affidavits setting forth such facts as would be admissible in evidence, but additional evidence, if tendered by either party, may be received and considered at the preliminary hearing.¹⁴

(b) *Transfer.* If the court determines at the preliminary hearing that the value of the property subject to the claim exceeds the jurisdictional limit of the court, the court or justice of the peace shall immediately issue an order transferring the proceeding to a court of competent jurisdiction and delivering the transcript of all docket entries and original papers to the clerk of the court having jurisdiction. After the proceeding has been transferred, the clerk of the transferee court shall docket the cause in the name of the plaintiff in the writ or distress warrant as the plaintiff and the claimant of the property as intervening claimant, mail notification to the parties that transfer of the proceeding has been completed, that the filing fee in the transferee court is due and payable within five days from the mailing of the notification and that the proceeding may be dismissed if the filing fee is not timely paid. A preliminary hearing in the transferee court shall be conducted in accordance with 2(a).

(c) *Temporary Order Following Preliminary Hearing.*

- (1) Following the preliminary hearing, the court must issue a written order¹⁵ that:
- (A) includes specific findings of fact in support of the legal grounds for the application¹⁶;
 - (B) sets the amount of bond required¹⁷ to release custody of the property to the claimant¹⁸ in an amount of at least the value of the property¹⁹;
 - (C) describes the property to be released to the claimant with such certainty that it may be identified and distinguished from property of like kind;
 - (D) sets a deadline by which each party must file a written signed statement of the party's right to title or possession of the property at issue; and
 - (E) sets a date for the expedited trial of the claim, not to exceed 21 days from the deadline by which the parties are to file their written statements. For good cause shown, or by agreement of the parties, the court may continue

¹³ Current TEX. R. CIV. P. 718.

¹⁴ Current TEX. R. CIV. P. 718.

¹⁵ Current TEX. R. CIV. P. 717.

¹⁶ Current TEX. R. CIV. P. 717.

¹⁷ Current TEX. R. CIV. P. 717.

¹⁸ Implied in current TEX. R. CIV. P. 719 wherein it states that "[n]o property shall be put in the custody of the claimant until the claimant has filed with the officer who made the levy, a bond . . ."

¹⁹ Current TEX. R. CIV. P. 719 provides that the bond be in "... an amount fixed by the court's order equal to double the value of the property so claimed . . ."

the trial of the claim by a period not to exceed 14 days. Thereafter, any further continuance must be by agreement of the parties.

- (2) The court may make additional orders, including orders concerning the possession, care, preservation, or disposition of the property, or the proceeds therefrom if the same has been sold, as justice may require²⁰.
 - (3) The court may order reasonable discovery. Discovery is limited to that considered appropriate and permitted by the court and must be expedited. In accordance with Rule 215, the court may impose any appropriate sanctions on any party who fails to respond to a court order for discovery.
 - (4) The temporary order will remain in effect until the court issues its judgment in the trial of right of property.
- (d) *Modification of Underlying Order.* If the court modifies its order or writ or distress warrant issued pursuant to the order, it shall make such further orders with respect to the bond as may be consistent with its modification²¹.

Rule TRP 3 (682). Bond

- (a) *Requirement of Bond.* Property may not be released to the claimant unless the claimant has filed²² with the clerk or the justice of the peace²³ a bond:
- (1) payable to the plaintiff on the writ or distress warrant in the amount set by the court²⁴;
 - (2) with sufficient surety or sureties as approved by the clerk or justice of the peace²⁵; and
 - (3) conditioned that, in the event the claimant fails to establish a right to the property:
 - (A) the claimant will return the property to the officer making the levy, or the officer's successor, in as good a condition as when the claimant received it, and pay the reasonable value of the use, hire, increase and fruits thereof from the date of the bond; or
 - (B) the claimant will pay the plaintiff the value of the property in the event the claimant fails to return the property, with legal interest thereon from the

²⁰ Current TEX. R. CIV. P. 718.

²¹ Current TEX. R. CIV. P. 718.

²² Current TEX. R. CIV. P. 719.

²³ Current TEX. R. CIV. P. 719 provides that the bond is "filed with the officer who made the levy."

²⁴ Current TEX. R. CIV. P. 719

²⁵ Current TEX. R. CIV. P. 717 and 719.

date of the bond, and will also pay all damages and costs that may be awarded against the claimant for wrongfully suing out the claim²⁶.

- (b) *Other Security.* In lieu of a bond, the claimant may deposit cash or other security in compliance with Rule 14c.
- (c) *Review of Claimant's Bond.* On reasonable notice, which may be less than three days, any party²⁷ shall have the right to prompt judicial review of the claimant's bond. Any party may move the court to increase or reduce the amount of the bond, or to question the sufficiency of the sureties in the court in which the trial of right of property is pending²⁸. The court's determination may be made on the basis of uncontroverted affidavits setting forth facts as would be admissible in evidence; otherwise, the parties must submit evidence. After a hearing on the motion, the court must issue a written order²⁹. on the motion.

Rule TRP 4 (683). Claimant's Right to Immediate Possession

If the claimant files a proper bond in the amount set by the court³⁰, the officer in possession of the personal property subject to the writ or distress warrant must release the property described in the court's temporary order to the claimant within a reasonable period of time after receipt of a certified copy of the temporary order and bond.

Rule TRP 5 (684). Return of Original Writ or Distress Warrant

Upon notification that an application has been filed, the officer executing the original writ or distress warrant, if it is in the officer's possession, shall endorse on the writ or distress warrant³¹:

- (a) the date and time of the notification;
- (b) the manner of the notification; and
- (c) if the notification was not by the clerk or justice of the peace, the date and time the officer confirmed with the clerk or justice of the peace that the application had been filed³².

²⁶ Current TEX. R. CIV. P. 719.

²⁷ Current TEX. R. CIV. P. 719 limits the authority to request review to the "[p]laintiff or claimant."

²⁸ Current TEX. R. CIV. P. 719.

²⁹ Current TEX. R. CIV. P. 719 provides that the court is to enter its order "with respect to such bond and sufficiency of the sureties.

³⁰ Implied by current TEX. R. CIV. P. 719 which provides: "No property shall be put in the custody of the claimant until . . .".

³¹ Current TEX. R. CIV. P. 720.

³² Current TEX. R. CIV. P. 720 provides the "officer receiving such application and bond shall endorse on the writ that such claim has been and application and bond given and by whom; and shall also endorse on such bond he value

The officer shall promptly return the original writ or distress warrant to the court from which it issued³³.

Rule TRP 6 (685). Trial

- (a) *Failure of Claimant to File a Written Statement or Appear.* If the claimant fails to file a written statement by the deadline set by the court, or if the claimant fails to appear for trial and the plaintiff in the original writ or distress warrant appears for trial, the plaintiff shall have judgment against the claimant by default as to the trial of right of property³⁴.
- (b) *Failure of Plaintiff to File a Written Statement or Appear.* If the plaintiff in the writ or distress warrant fails to file a written statement by the deadline set by the court, or if the plaintiff fails to appear for trial and the claimant appears for trial, then the plaintiff shall be non-suited as to the trial of right of property³⁵.
- (c) *Trial Proceedings.* The proceedings and practice on the trial shall be governed by the Texas Rules of Civil Procedure and the Texas Rules of Evidence³⁶.
- (d) *Burden of Proof.*
 - (1) *Property Originally in Possession of Claimant.* If the property was taken from the possession of the claimant pursuant to the original writ or distress warrant, the burden of proof shall be on the plaintiff in the writ or distress warrant.
 - (2) *Property Originally in Possession of Others.* If the property was taken from the possession of any person other than the claimant, the burden of proof shall be on the claimant³⁷.

Rule TRP 7 (686). Judgment Following Trial

- (a) *If Claimant Prevails.* If the claimant prevails at the trial of right of property, the judgment shall:

of the property as assessed by himself, and shall forthwith return such bond with a copy of the writ to the proper court having jurisdiction to try such claim.

³³ Current TEX. R. CIV. P. 722.

³⁴ Current TEX. R. CIV. P. 725 provides: "If the plaintiff appears and the claimant fails to appear or neglects or refuses to join issue under the direction of the court or justice within the time prescribed for pleading, the plaintiff shall have judgment by default.

³⁵ Current TEX. R. CIV. P. 726.

³⁶ Current TEX. R. CIV. P. 727 provides: "The proceedings and practice on the trial shall be as nearly as may be the same as in other cases before such court or justice."

³⁷ Current TEX. R. CIV. P. 728.

- (1) order the property released to the claimant, or that the property remain in possession of the claimant if the claimant obtained possession pursuant to the temporary order; and
- (2) discharge the principal and sureties on the claimant's surety bond, or, if other security was posted, direct that the other security be released or returned to the claimant.

(b) *If Claimant Does Not Prevail.*

- (1) *Claimant Not in Possession of Property.* If the claimant is not in possession of the property at the time of the trial of right of property, and the claimant fails to establish a superior right to possession or title the property, judgment shall be entered against the claimant.
- (2) *Claimant in Possession of Property.* If the claimant is in possession of the property at the time of the trial of right of property, and the claimant fails to establish a superior right to possession or title to the property, judgment shall be entered against the claimant and the sureties on claimant's bond, or for recovery from other security posted, for:
 - (A) the value of the property, with legal interest from the date of posting of the bond³⁸ or other security;
 - (B) loss of the use, hire, increase, and fruits thereof from the date of the posting of the bond or other security; and
 - (C) additional statutory damages under section 25.002 of the Texas Property Code.

(c) *Satisfaction of the Judgment.*

- (1) *Property Returned.* If, within ten days of the date the judgment determining the trial of right of property is signed, the claimant returns the property in as good a condition as when the claimant received it, and pays the reasonable value of the use, hire, increase, and fruits thereof from the date of posting of the bond or other security, and costs, then the delivery and payment shall operate as a satisfaction of the judgment³⁹.
- (2) *Execution Shall Issue if Property Not Returned.*⁴⁰ If the judgment is not satisfied by the delivery or return of the property, then after ten days from the date of the judgment, execution shall issue thereon in the name of the plaintiff or defendant

³⁸ Current TEX. R. CIV. P. 730.

³⁹ Current TEX. R. CIV. P. 732.

⁴⁰ This rule remains in substantially in the form in existing Rule 733. Please advise your recommendations, if any, concerning any modification to this subparagraph.

for the amount of the claim, or all of the plaintiffs or defendants for their several claims, provided the amount of such judgment shall inure to the benefit of any person who shall show superior right or title to the property claimed as against the claimant; but if such judgment be for a less amount than the sum of the several plaintiffs' or defendants' claims, then the respective rights and priorities of the several plaintiffs or defendants shall be fixed and adjusted in the judgment.

Rule TRP 8 (687). Claim is a Release of Damages

A claim made to the property, under the provisions of this section, shall operate as a release of all damages by the claimant against the officer who levied upon the property⁴¹ or seized the property pursuant to a distress warrant.

Rule TRP 9 (688). Levy on Other Property

Proceedings for the trial of right of property under these rules shall in no case prevent the plaintiff in the original writ or distress warrant from having a levy made upon any other property of the defendant⁴².

⁴¹ Current TEX. R. CIV. P. 733.

⁴² Current TEX. R. CIV. P. 734.