

**PROPOSAL BY TEXAS CREDITORS BAR ASSOCIATION (“TXCBA”) AND TEXAS
ASSOCIATION OF TURNOVER RECEIVERS (“TATR”) TO EFFECTUATE HOUSE BILL
3774 RELATING TO EXEMPTIONS**

Summary

HB 3774 requires a simple and expedited procedure for a judgment debtor to assert an exemption to the procedure of personal property, a process to stay a proceeding for a reasonable period to allow for the assertion and consideration of the exemption, and a form notice to be provided.

The TXCBA and TATR organizations have contemplated this Legislative mandate, and believe that this bill impacts many post-judgment procedures outlined in the Texas Rules of Civil Procedure. Writs of execution, writs of garnishment, turnover receiverships, attachments and turnover orders are all affected by this process. Rather than attempt a massive re-write of each section of Part VI of the Texas Rules of Civil Procedure, we recommend the creation of a new Rule 717a in Section 9 of Part VI that can be applied to the appropriate ancillary proceedings. This Section already applies to the claims of third parties to personal property levied upon by judicial process. Adding a rule related to the assertion of property exemptions fits within the heading of the Section – “Trial of Right of Property” – and the addition of one rule should accomplish what is needed.

The proposed exemption notice claim form must similarly work in many situations, and in all forms of courts, including justice courts. It must also take into account the legislative mandate that the hearing occur promptly and the burden of the defendant to prove their entitlement to the exemption¹, so the form should walk an unsophisticated defendant through the relevant potential exemptions, prompt them to attach relevant proof, ask them to attest to their claim, and provide notice to all relevant parties. Additional prompts for notification by email and participation in remote proceedings if available can help a hearing occur quickly if needed.

Proposed New Rules

PART VI. RULES RELATING TO ANCILLARY PROCEEDINGS

SECTION 9. TRIAL OF RIGHT OF PROPERTY

TRCP 717a. PERSONAL PROPERTY EXEMPTIONS IN POSTJUDGMENT PROCEEDINGS

Whenever a postjudgment warrant, turnover order, writ of garnishment, execution, attachment or other like writ is levied upon personal property of an individual defendant, the plaintiff or receiver making the levy shall, as soon as practicable following notice that the property has been seized, mail a notice to the defendant regarding their right to assert an exemption. The notice shall be in the form promulgated by the Texas Supreme Court, and shall include a form for asserting an exemption. The notice and form may be sent in conjunction with other notices required by these rules.

A court, receiver or officer having the property in possession shall not cause or order the disposition or delivery of personal property to the plaintiff for ten days after the notice and form are mailed, to allow for the assertion of an exemption by the defendant. When the defendant fails to assert an

¹ *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex.1991); *Roosth v. Roosth*, 889 S.W.2d 445, 459 (Tex.App.-Houston [14th Dist.] 1994, writ denied).

exemption within ten days after the levy and notice, the officer or receiver having the property in possession may at any time thereafter deliver the same to plaintiff.

If the defendant timely files a form asserting an exemption, on reasonable notice to the opposing party (which may be less than three days), the court shall promptly set a hearing on the exemption. The court, receiver or officer having the property in possession shall not cause or order the disposition or delivery of personal property to the plaintiff until the hearing is held. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order allowing or denying the exemption, or may defer ruling on the exemption if additional evidence or discovery is required.

Commentary:

Reference is made to an "individual defendant" because corporate defendants do not have personal property exemptions. See Tex. Prop. Code. §42.001 et seq. This process should not be required for post-judgment processes against corporate defendants without personal property exemptions.

The notice regarding exemptions should be able to be sent at the same time as other notices to the judgment debtor, such as Rules 663a & 700a regarding the right of replevy for execution and garnishment. When a notice can be sent after a seizure or levy changes depending on the property seized and the process by which the seizure occurs. While a notice may be promptly sent when funds are seized and a bank is prompt in notifying the creditor or receiver, a deputy seizing a vehicle under a writ of execution over a weekend may not notify a creditor for several days. Additionally, a notice should not be sent that funds or property has been frozen if no funds were frozen or property captured.

The ten-day period allowing for the assertion of an exemption is designed to match up with other reasonable periods in enforcement proceedings for the delivery of property. See Tex, R. Civ. P. 705, 708.

Language for the first paragraph was modelled after Tex. R. Civ. P. 717 and 700a. Language for the second paragraph was pulled from the statute itself and Tex. R. Civ. P. 708. Language for the third paragraph was modeled on the prompt review language of Tex. R. Civ. P. 701.

The current Rule 717 will need to be renumbered, and additional clarifying language may need to be added to the other rules in Section 9 to clarify that they only apply to the current Rule 717.

CAUSE NO. _____

[PLAINTIFF NAME],
PLAINTIFF

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IN THE _____ COURT

v.

DEFENDANT

COUNTY, TEXAS

PERSONAL PROPERTY SEIZURE EXEMPTION NOTICE AND CLAIM FORM

To _____, Defendant:

You are hereby notified that certain funds or property alleged to be claimed by you have been seized. If you claim any rights in such property, you are advised:

YOU MAY HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY ASSERTING AN APPLICABLE EXEMPTION UNDER FEDERAL OR STATE LAW. YOU MAY SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A COMPLETED COPY OF THIS FORM.

To assert an exemption, please mark the exemption(s) you are asserting below, attach any evidence documenting your exemption(s), complete the form, and file a copy with the Court designated below within ten (10) days from the date this notice was mailed to you.

I hereby assert that the following FEDERAL personal property exemption(s) apply to currently seized property [check all that apply]:

- ___ - Social Security Administration benefit payments protected under 42 USC 407 and 42 USC 1383(d)(1);
- ___ - Veterans Administration benefit payments protected under 38 USC 5301(a);
- ___ - Railroad Retirement Board benefit payments protected under 45 USC 231m(a) and 45 USC 352(e);
- ___ - Office of Personnel Management benefit payments protected under 5 USC 8346 and 5 USC 8470;
- ___ - Federal Emergency Management Agency benefits protected under 44 CFR 206.110(g);

I hereby assert that the following TEXAS personal property exemption(s) apply to currently seized property [check all that apply]:

- ___ - funds from Temporary Assistance for Needy Families (TANF);
- ___ - proceeds from the sale of homestead property, where the sale occurred less than six months from the date the proceeds were seized;
- ___ - distributions from a qualified savings plan under Tex. Property Code § 42.0021, where the distribution occurred less than sixty days from the date the proceeds were seized;
- ___ - rights to workers' compensation benefits;

- ___ - rights to unemployment benefits, or unemployment benefits that have not been comingled with other funds of the individual except for debts incurred for necessities furnished to the individual or the individual's spouse or dependents during the time that the individual was unemployed;
- ___ - property that has an aggregate fair market value of not more than \$100,000 (for a family) or \$50,000 (for an individual), exclusive of the amount of any liens, security interests, or other charges encumbering the property, and consisting of:
 - ___ - home furnishings, including family heirlooms;
 - ___ - provisions for consumption;
 - ___ - farming or ranching vehicles and implements;
 - ___ - tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
 - ___ - wearing apparel;
 - ___ - jewelry not to exceed 25% of the aggregate limitations prescribed above;
 - ___ - two firearms;
 - ___ - athletic and sporting equipment, including bicycles;
 - ___ - a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person;
 - ___ - the following animals and forage on hand for their consumption;
 - Two horses, mules or donkeys and a saddle, blanket, and bridle for each;
 - 12 head of cattle;
 - 60 head of other types of livestock; and
 - 120 fowl;
 - ___ - household pets;
 - ___ - unpaid commissions not to exceed 25% of the aggregate limitations prescribed above;
- ___ - current wages for personal services, except for the enforcement of court-ordered child support payments;
- ___ - professionally prescribed health aids of a debtor or a dependent of a debtor;
- ___ - alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor;
- ___ - a religious bible or other book containing sacred writings of a religion that is seized by a creditor other than a lessor of real property who is exercising the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease;
- ___ - rights to a qualified savings plan such as a retirement, pension, IRA, health savings account, prepaid tuition contract, annuity, or other plan as set forth in Tex. Property Code 42.0021;
- ___ - insurance or annuity benefits as described in Tex. Insurance Code §1108.051(a).

Information on free and low-cost legal services can be found at <https://www.txcourts.gov/programs-services/legal-aid>, or by contacting your local bar organization. Legal aid offices in Texas include Texas Rio Grande Legal Aid (800-369-0574), Lone Star Legal Aid (800-733-8394) and Legal Aid of Northwest Texas (800-955-3959).

My contact information is as follows:

Name: _____
Address: _____

Phone: _____
Email: _____

- ___ - Yes, I am willing to receive court notices and correspondence via email.
___ - No, I am not willing to receive court notices and correspondence via email. All notices should be sent to me by mail.
- ___ - Yes, I am willing and able to participate in a hearing remotely via telephone, video or other technological means if available.
___ - No, I am not willing or able to participate in a hearing remotely. I will attend in person.
- ___ - Yes, I would like the plaintiff or receiver to contact me to discuss resolving this matter using the contact information provided above.
___ - No, I would not like the plaintiff or receiver to contact me to discuss resolving this matter.
- ___ - I have attached documentation in support of my exemption claim.

I hereby swear that the above is true and correct, and request that the Court set a hearing on my exemption claim as set forth above. I further declare that I sent copies of this exemption form to the Court and the parties below.

Claimant

NOTIFIED PARTIES

Court

Plaintiff or Plaintiff's Attorney

Receiver/Levying Officer:

(Translation in Spanish)

Commentary:

The first part of the notice is modeled after existing notices in Tex. R. Civ. P. 663a, 699, and 700a.

Summarizing all personal property exemptions in one document is a daunting task, especially given the mandate that the notice be in plain language. The exemptions are most easily organized by listing first federal exemptions, then state exemptions, and simply quoting the provision. Care must be taken between an exemption to garnishment of a *right* to a benefit, versus the benefit after it has been paid and deposited into a bank account.²

All property exemptions subject to the personal property value limits of Tex. Prop. Code § 42.001(a) were grouped together so that a judgment debtor would understand that the subsections were governed by those limitations.

Given the need for a speedy hearing, an option should be provided for the judgment debtor to elect to receive notices electronically, to participate remotely in a hearing, to indicate a desire to discuss resolution with the judgment plaintiff or court-appointed receiver, and to attach evidence supporting their claim. This can prompt the parties to resolve the property seizure sooner than the court can schedule a hearing.

² For example, unpaid commissions for personal services are protected, but not once they are paid. Tex. Prop. Code § 42.001(d); *Mass. Mut. Life Ins. Co. v. Shoemaker*, 849 F. Supp. 30, 33 (S.D.Tex. 1994). Tex. Labor Code § 408.201 is in "Subchapter K. Protection of Rights to Benefits", and does not protect workers' compensations funds after deposit. Tex. Labor Code § 207.075 provides an absolute exemption for the right to unemployment benefits, but only protects received benefits if not commingled with other funds except in certain circumstances. "Current wages" have also long fallen into this category – they are protected from garnishment while in the hands of the employer or while in the form of a paycheck, but once deposited they are no longer "current" or exempt. Tex. Prop. Code § 42.001(b)(1); *Sutherland v. Young*, 292 S.W. 581 (Tex.Civ.App.--Waco 1927, no writ); *Bandy v. First State Bank, Overton, Tex.*, 835 S.W.2d 609, 620 (1992); *American Express Travel Related Services v. O.L. Harris*, 831 S.W.2d 531 (Tex.App.--Houston [14th Dist.] 1992, no writ)