

**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 in clear and readable language.

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. Postjudgment 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 621b in Section 3 of Part VI that can be applied to the appropriate ancillary proceedings. This Section already applies to the general execution and enforcement process of judgments of the district, county, and justice courts.

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.

A request was made for a form turnover receivership order and language addressing the exemption process. TATR believes that a form receivership order would be difficult to implement, as the facts of each judgment enforcement are different, requiring different receiver powers and scope to address the situation. Additionally, many judges have unique opinions about the scope and control they wish to exert over their appointed receivers, resulting in very different orders used throughout Texas. TATR believes that any such consideration of a form order should be limited to justice court cases only. Proposed language has been provided below, but should be simple and straightforward, as receivers will be required to follow whatever rule is implemented.

Proposed New Rule

PART VI. RULES RELATING TO ANCILLARY PROCEEDINGS

SECTION 3. EXECUTIONS

TRCP 621b. 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

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).

making the levy shall, as soon as practicable following notice that the property has been seized, serve 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 with the appropriate style, cause number, and addresses for the court and parties. The notice and form may be served pursuant to Rule 21a or Rule 501.4 as applicable 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 fourteen days after the notice and form are served, to allow for the assertion of an exemption by the defendant, but a receiver or officer may notice property for sale if the date is after the expiration of the exemption period. If the defendant fails to assert an exemption within fourteen days after the levy and notice, the officer or receiver having the property in possession may at any time thereafter dispose of the property or deliver the same to plaintiff.

A defendant must file and serve on all parties a form asserting an exemption at least seven days prior to sale or distribution. Upon the defendant's timely claim of exemption, on reasonable notice to all parties (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 their 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. The court may extend any time period under this rule for good cause shown.

Commentary on the Proposed Rule:

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 proceedings 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 fourteen-day period allowing for the assertion of an exemption is designed to match up with other reasonable periods, such as the answer due date period for justice court cases, and the exemption deadline periods in other states.²

² The TXCBA conducted an informal survey of exemption periods in approximately 30 states. For those states that provided for exemption periods, the average was 10-20 days. California, Kentucky, and Nebraska had a ten-day period. Alaska, Colorado, Connecticut, Minnesota, Ohio, and Utah had a 14- or 15-day period. Florida, Georgia, Missouri, New York, North Carolina, and Wisconsin had a 20-day period.

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 rule has been modified from the initial proposal to require the creditor or receiver to “pre-fill” the notice with the court information. This eliminates any concerns that an unsophisticated defendant will not know how to complete the form, or send to the wrong court or party.

Proposed Receivership Order Language

The Texas Supreme Court, to the extent it believes necessary, could issue a miscellaneous order directing all Texas courts to include the following language in any order appointing a turnover receiver under Tex. Civ. Prac. & Rem. Code § 31.002:

“Personal Property Exemptions of Debtor: Receiver shall comply with Texas Rule of Civil Procedure 621b regarding the procedures for notifying the Judgment Defendant of their rights to assert personal property exemptions.”

Commentary on the Proposed Language:

Court-appointed turnover receivers are experienced creditors’ attorneys, with an existing obligation to abide by the Texas Rules of Civil Procedure and enforce the Court’s judgment. The Debtor Group’s proposal would try to expand the receiver’s rule into a “master in chancery” role where the receiver would have to independently evaluate the possibility of exemptions, even if a debtor does not asset them³, or provide additional notice before even discussing a possible payment plan on the judgment, even if the judgment debtor wants immediate resolution. These obligations are not appropriate given the receiver’s role.

Proposed Exemption Notice and Claim Form

The proposed forms are included on the next page, formatted to demonstrated that each could be fitted onto a 2-page, front-and-back format in 11-point font.

Because the Debtor Group form notices emphasize their belief that paychecks deposited in bank accounts are exempt in turnover orders but not in garnishments – thereby creating their need for multiple forms and rules – we have attached the original bill analysis for HB 1029, which passed in 1989 and created Tex. Civ. Prac. & Rem. Code §31.002(f). It makes it abundantly clear that the statute protects exempt paychecks, not deposited funds.

³ The Texas Supreme Court has held that the effect of the turnover statute was to require the burden of production of property subject to execution to shift to the debtor; once the asset is traced to the debtor, the debtor must account for the asset. *Beaumont Bank, N.A.*, 806 S.W.2d at 226. The general rule in Texas is that a party asserting a property exemption must bear the burden of establishing entitlement to it. *Rucker v. Rucker*, 810 S.W.2d 793, 795-96 (Tex.App.-Houston [14th Dist.] 1991, writ denied)(summarizing cases).



PERSONAL PROPERTY SEIZURE EXEMPTION NOTICE

To the Judgment Defendant:

You are receiving this notice because certain personal property and/or funds that may be owned by you was seized pursuant to a judgment. **YOU MAY BE ABLE TO GET YOUR PROPERTY AND/OR FUNDS BACK, SO READ THIS NOTICE CAREFULLY.**

The following is a list of personal property that may be exempt from judgment enforcement. **IF YOU BELIEVE THE PROPERTY AND/OR FUNDS THAT ARE BEING SEIZED ARE EXEMPT, FILE THE CLAIM OF EXEMPTION FORM THAT YOU RECEIVED WITH THIS NOTICE AND FOLLOW THE INSTRUCTIONS IN THIS NOTICE.**

NO ACTION WILL BE TAKEN TO DISPOSE OF YOUR FUNDS OR PROPERTY FOR FOURTEEN DAYS AFTER SERVICE OF THIS NOTICE. IF YOU DO NOT TIMELY FILE YOUR CLAIM, PROCEEDINGS WILL RESUME AGAINST THE PROPERTY AND/OR FUNDS.

Exemptions are found in the United States Code (USC) and in the Texas Property Codes, primarily Chapter 42 of the Texas Property Code. Because of periodic changes in the law, the list may not include all exemptions that apply in your case. The exemptions may not apply in full or under all circumstances. Some exemptions are not available after a certain period of time. You or your attorney should read the statutes. You should assert your property exemptions in court, or they may be waived.

FEDERAL EXEMPTIONS

Social Security benefits	Office of Personnel Management retirement benefits
Veterans Administration benefits	FEMA payments
Railroad Retirement Board benefits	

TEXAS EXEMPTIONS

Current wages for personal services	Professionally prescribed health aids
Funds from Temporary Assistance for Needy Families	Alimony, support, or separate maintenance
Proceeds from the sale of a homestead	Religious bible or other sacred religious book
Individual Retirement Account distributions (IRAs)	Life insurance or annuity benefits
401k account distributions	Education savings accounts (ESA)
Workers' compensation benefits	Health savings accounts (HSA)
Unemployment benefits (not comingled with other funds)	

The following property exemptions are subject to a combined cap of \$100,000 (for a family) or \$50,000 (for an individual) of its aggregate fair market value, exclusive of any liens, security interests, or other charges:

Home furnishings, including family heirlooms	Motor vehicle for each member of the family
Provisions for consumption	Two horses, mules or donkeys with forage and saddlery
Farming or ranching vehicles and implements	12 head of cattle with forage on hand
Tools & equipment used in a trade or profession	60 head of other livestock with forage on hand
Jewelry not exceeding 25% of the limit	120 fowl with forage on hand
Two firearms	Household pets
Athletic & sporting equipment	Unpaid commissions not exceeding 25% of the limit

Exemption Claim Form Instructions

If you wish to file an exemption claim form, follow the below instructions:

1. Fill in your name and contact information in Section 1.
2. Identify the property or funds you claim as exempt in Section 2. For example, you can identify the name of the bank where funds were frozen. **DO NOT INCLUDE YOUR FULL BANK ACCOUNT NUMBER OR FULL VEHICLE IDENTIFICATION NUMBER.**
3. Identify the exemption that you believe applies to your property in Section 2. You can copy any relevant exemption from the list in this notice, or describe it in your own words.
4. Write any facts that support your claim of exemption in Section 2. This may help the Court, creditor or receiver evaluate your claim in advance of your hearing.
5. If you are attaching any documentation in support of your exemption claim, describe it in Section 2. You do not need to attach documentation; you may bring it to your hearing. However, sending documentation in advance may help resolve your exemption claim. **DO NOT SUBMIT BANK STATEMENTS OR COPIES OF VEHICLE TITLES THAT IDENTIFY YOUR PERSONAL INFORMATION, SUCH AS FULL BANK ACCOUNT NUMBERS OR VIN NUMBERS, WITHOUT REDACTING THOSE NUMBERS ON YOUR COPIES.**
6. In Section 3, choose whether you would like to receive future court communications by email or mail, whether you are willing to participate in a remote hearing (such as by telephone, Zoom, Webex, etc.), and whether you are willing to be contacted about resolution of your matter by the plaintiff or receiver.
7. Sign and date the form in Section 4. Make as many copies of the form as you need for everyone in the Notified Parties section. **Keep a copy of the form for yourself.**
8. **Take the original form to the clerk of the court** at the address indicated, or mail it to them. Send copies to everyone else listed in the Notified Parties section. You can email it to them if an email address is provided.

The court will schedule a hearing once your claim form has been received, and notify you of the time and date of the hearing. Make sure to attend the hearing. If you do not attend, the court is likely to rule against you. You can attend with or without an attorney.

At the hearing, tell the court why your property is protected. Bring any supporting documents or other items to the hearing, such as:

- Proof of the source of exempt funds, such as Social Security;
- A divorce decree for alimony, child support, or spousal support;
- Certificates of title for any vehicle that has been seized; and
- Any other information or document(s) that shows that your property or funds are protected.

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).

CAUSE NO. _____

[PLAINTIFF NAME],
PLAINTIFF

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§
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§
§
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§

IN THE _____ COURT

v.

[DEFENDANT NAME],
DEFENDANT

_____ COUNTY, TEXAS

PERSONAL PROPERTY EXEMPTION CLAIM

I HEREBY ASSERT ONE OR MORE PERSONAL PROPERTY EXEMPTIONS AS SET FORTH BELOW.

Section 1. Identification

My current contact information is as follows:

Name: _____
Address: _____

Phone: _____
Email: _____

Section 2. Exemption Claim

The property and/or funds I claim to be exempt is (describe):

The exemption(s) that I claim is applicable is (specify):

The facts which support this claim are (describe):

I can bring documentation in support of my exemption claim to my hearing. If I am attaching them to my claim form, they are (describe):

Section 3. Options for Further Proceedings

(Please select Yes or No for each option)

- 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.

Section 4. Verification and Signature.

I hereby declare under penalty of perjury 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 with any accompanying documentation to the Court and the parties below.

Date

Signature of Claimant

NOTIFIED PARTIES

Court (send original form)

[completed by creditor/receiver]

Plaintiff or Plaintiff's Attorney

[completed by creditor/receiver]

Receiver/Levying Officer:

[completed by creditor/receiver]

Commentary:

The overall structure is modelled after the California exemption list and form, which has a two-page notice form and a one-page exemption form. With the legislative mandate to translate this form into Spanish, detail all exemptions, and retain clear language, it is imperative that the defendant not be overwhelmed with paper. This form fits the notice and claim form onto what can be one-page, front-and-back forms that can be replicated in Spanish.

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, then state exemptions subject to an aggregate monetary cap. 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.

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.⁴ This form sidesteps the issue pressed by the proposal from Texas Appleseed and TRGLA about the “proceeds of current wages”. The notice references the exemption, and allows anyone to assert it if they so choose. The courts are left to interpret the law on the issue; deciding it is outside the scope of the legislative mandate.

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, and avoid clogging the dockets of already backlogged and overwhelmed courts. Most people want to work things out.

The claim form should be signed under penalty of perjury by the claimant. Because the rule provides for a potential expedited hearing with less than three days’ notice, there may not be time for a judgment plaintiff or receiver to investigate the facts raised in the claim. Additionally, the filing of the exemption claim may have the effect of cancelling a scheduled sale, which may cause the creditor or receiver to incur costs. Just as a defendant seeking to restrain a real estate foreclosure by temporary restraining order would be required to submit a verified petition or affidavit, a defendant should be required to at least swear to the alleged facts of the exemption, to discourage abuse.

⁴ 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)