

**POST JUDGMENT REMEDIES:
TIPS FOR LITIGATORS FROM A
CREDITORS' RIGHTS ATTORNEY**

DONNA BROWN

Donna Brown, P.C.

1250 S. Capital of Texas Highway, Building I, Suite 320
Austin, Texas 78746

Phone: (512) 732-2376

Fax: (512) 732-2518

email: dbrown@dbrownlaw.com

Website: www.dbrownlaw.com

State Bar of Texas
BUSINESS TORTS INSTITUTE 2011

CHAPTER 7

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ANALYSIS OF COLLECTIBILITY	1
III.	ASSET SEARCHES AND PRE-JUDGMENT DISCOVERY	1
IV.	REMEDIES	1
A.	Post Judgment Discovery	1
B.	Judgment Liens	2
C.	Execution	2
D.	Garnishment	4
E.	Turnover Proceedings	5
F.	Other Remedies	7
V.	CONCLUSION	7

Post Judgment Remedies: Tips for Litigators from a Creditors' Rights Attorney

I. INTRODUCTION

Creditors' rights attorneys often file multiple suits in any given week. These suits are largely a special breed of suits, often resulting in default judgments with the real action not starting until after the judgment is signed. The problem of collecting judgments, however, is not limited to collection suits. The purpose of this article is to provide collection tips to general litigators.

II. ANALYSIS OF COLLECTIBILITY

The analysis of the collectibility of a claim should begin at the inception of the case. This will avoid the problem of the disappointed client who spends precious legal dollars only to discover that the judgment provides an empty victory. The collectibility analysis is three-fold: (1) are all potentially liable parties joined in the suit?; (2) what assets are available to satisfy the judgment?; and (3) how will one tap those assets for satisfaction of the judgment?

III. ASSET SEARCHES AND PRE-JUDGMENT DISCOVERY

A basic pre-suit asset search provides a good start to the collection analysis. This search begins with the property owned by the potential party, which can often be identified through appraisal district records, many of which are accessible on the internet. A list of Appraisal District offices and contact information is found on the website for the Texas Comptroller of Public Accounts at www.window.state.tx.us/taxinfo/proptax/ada/index.html. But the search should not stop there. If the claim is against an entity, one may want to check Secretary of State records <https://direct.sos.state.tx.us> for any additional entities with which the officers of the company are associated. Perhaps a related entity is a proper party. Further, a review of the Texas Comptroller of Public Accounts records at <http://ecpa.cpa.tx.us> may reflect a forfeiture of corporate privileges which can result in personal liability for the officers and directors of the company under Texas Tax Code Section 171.255. Many real property records are now available on the net, thus affording the opportunity to detect fraudulent transfers of real property. One may consider bringing a fraudulent transfer action in the primary suit since transfers can be fraudulent as to creditors with contingent claims. See Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code §24.001 et seq. Searches on internet search engines such as Google at

www.google.com are also useful in locating debtors, their assets, and news that may assist in the collection of the debt. As each potential party is added to the suit, so are their assets added to the collection pool.

In addition to basic searches that can be performed online or at the local courthouse, one may want to consider obtaining an asset search by a qualified investigator if the amount of the claim justifies the expense. Again, this should be done at the onset of the claim analysis. These searches often reveal information on potentially liable parties and provide a snapshot of the available assets for satisfaction of the judgment. A periodic update of the search may also provide a red flag if assets are moved during the course of the litigation. If pre-judgment remedies are warranted, the initial search and follow up searches may prove useful. An analysis of pre-judgment remedies is beyond the scope of this article, but remedies such as attachment require discovery of property subject to attachment. See Civ. Prac. & Rem. Code Chapter 61.

If the suit includes a claim for punitive damages the debtor's net worth is relevant and thus discoverable under Rule 166b (2). *Lunsford v. Morris*, 746 S.W.2d 471 (Tex. 1988). Net worth is also discoverable by statute to prove up exemplary damages for cases governed by Chapter 41 of the Civil Practices and Remedies Code. This ability to discover the potential debtor's assets and liabilities at the early stages of the case provides a great opportunity to determine collectability of the claim very early on.

IV. REMEDIES

Assuming one has joined all potentially liable parties and becomes a judgment creditor, the post judgment remedies for collecting the judgment include: (1) post judgment discovery, (2) judgment liens, (3) writs of execution, (4) garnishment, and (5) turnover. A consideration of those remedies provides the balance of this article.

A. Post Judgment Discovery

Texas Rules of Civil Procedure, Rule 621a, provides the authority for conducting post judgment discovery and provides that the successful party may initiate discovery in the same suit in which the judgment was rendered and use any discovery proceedings authorized by the rules for pre-trial matters. However, pre-trial discovery limitations do not apply. Tex. R.C.P. Rule 190.6 provides that limitations on discovery do not apply to discovery conducted under Rule 621a. The use of contempt to enforce post judgment discovery under Tex. R. C. P.

215.2(b)(6) is a common practice. This discovery is available when the judgment is final as to all parties and issues. In re Edward B. Elmer, M.D. P.A., 158 S.W. 3d 603 (Tex. App. – San Antonio 2005, orig. proceeding). “Final” does not mean unappealable or even that the case has not been appealed. One may proceed with post judgment discovery as long as a supersedeas bond is not on file. Tex. R.C.P. Rule 621a. Pressing forward with post judgment discovery can encourage the posting of a supersedeas bond. The collectibility of a judgment is greatly enhanced by the posting of the bond or cash in lieu of bond.

B. Judgment Liens

A judgment lien is created by the proper recording and indexing of an abstract of judgment in the county real property records. It attaches to any non exempt real property in the county where filed. Tex. Prop. Code Ann. §52.001. Nothing in the statutes related to abstracts of judgment requires that the judgment be 30 days old. Tex. Prop. Code Ann. §52.002. If the judgment debtor has non exempt real property, it is vitally important to file the abstract as soon as possible after the judgment is signed. It is not uncommon for a judgment debtor to attempt some post judgment asset protection planning when the reality of the judgment sets in.

The abstract of judgment can be prepared by the judgment creditor’s attorney, unless it is a Federal Court judgment in which case it must be “on the certificate of the clerk of the court”. Tex. Prop. Code Ann. §52.002, 52.007. The contents of the abstract are governed by Texas Property Code Ann. §52.003 (Vernon Supp. 1993). While §52.003 provides that the abstract may include the mailing address for the judgment creditor, §52.0041 requires the mailing address in order to prevent a filing penalty. Strict compliance with the statute is required because it is a non-consensual lien. Rosenfield v. Alley & Stainless, Inc., 62 B.R. 515 (Bankr. N.D. Tex. 1986). If one fails to strictly comply with the requirements, no lien attaches.

The judgment lien attaches to property that was previously exempt and becomes non exempt. Walton v. Stinson, 140 S.W. 2d 497 (Tex. App. – Dallas 1940, writ ref’d); Intertex, Inc. v. Kneisley, 837 S.W. 2d 136 (Tex. App. – Houston [14th] writ denied). It also attaches to after acquired non exempt property. Tex. Prop. Code Ann. §52.001. Therefore, one should consider filing the abstract in every county in which the debtor owns property, does business, or may inherit property. The lien continues for ten years from date of recordation and indexing if the judgment does not become dormant. Tex. Prop. Code Ann. §52.006. One keeps the judgment alive by obtaining a writ of

execution within ten years after the rendition of the judgment and using due diligence to obtain satisfaction of the judgment. This extends the life of the judgment for ten years from the issuance of the writ of execution. Civ. Prac. & Rem. Code §34.001; Ross v. American Radiator & Standard Sanitary Corp., 507 S.W. 2d 806 (Tex. App. – Dallas 1974, writ ref’d n.r.e.). Dormant judgments can be revived by scire facias or action of debt brought no later than the second anniversary of the date the judgment becomes dormant (Tex. Civ. Prac. & Rem. Code §31.006). A new abstract should also be filed to extend the lien beyond the original ten year period. Tex. Prop. Code Ann. §52.006.

The judgment lien is effective even if a supersedeas bond is filed. The judgment debtor can obtain relief from the judgment lien under Chapter 52 of the Property Code.

In summary, one should always perfect a judgment lien as soon as possible after the judgment is rendered, even if the case is headed for the appellate courts.

C. Execution

As a general rule, the writ of execution is not issued until 30 days after the final judgment is signed. Tex. R. Civ. P. 627. However, the writ can be issued earlier upon affidavit that the judgment debtor is about to remove non exempt property from the county or transfer or secrete it for purposes of defrauding creditors. Tex. R. Civ. P. 628.

The general contents of the writ of execution are covered by Tex. R. Civ. P. 629. Additional requirements for the writ will depend on the nature of the recovery, i.e. whether it is a money judgment, for sale of particular property, for delivery of personal property or for possession or value of personal property, and are found at Tex. R. Civ. P. 630, 631, 632 and 633. The attorney should review the writ as issued to insure that the writ correctly reflects the judgment.

Local practice varies from county to county on whether writs are handled by the sheriff’s department or the constable’s office. Local practice also varies on whether the constable’s office in one precinct will handle a writ against a judgment debtor residing or doing business in another precinct. For example, in Travis County writs of execution are handled by the constable’s office and the constable is not limited to his or her precinct. In Harris County the constables usually do not cross precinct lines. In Bexar County, writs of execution are generally handled by the civil division of the sheriff’s department. The cost of

handling a writ of execution likewise varies from county to county.

Writs of execution are addressed to “any sheriff or any constable” under Tex. R. Civ. P. Rule 629, just as Tex. R. Civ. P. Rule 663 references the sheriff or constable “receiving the writ of garnishment.” However, effective July 1, 2005, Tex. R. Civ. P. Rules 103 and 536(a) were amended to provide that a person other than a sheriff or constable can serve a writ that “requires the actual taking of possession of a person, property or thing” by written court order. The comments indicate that such orders are to be used in “rare” circumstances. Experts differ on whether process servers can serve writs of garnishment without the referenced court order; however, this author believes that, since garnishment writs contemplate an officer eventually taking “effects” of the judgment debtor, an order would be necessary. It remains to be seen whether courts will readily sign orders providing for service of writs of garnishment and writs of execution by process servers.

Sheriffs and constables appreciate receiving as much information on the judgment debtor as possible to assist them in the levy including where the debtor lives and works, phone numbers, identifying information such as dates of birth, drivers’ license numbers and social security numbers, plus information on the debtor’s non exempt property that is subject to levy. A complete discussion of exempt property is beyond the scope of this paper. A discussion of exempt property is included in a comprehensive paper on post judgment remedies on the author’s website at www.dbrownlaw.com entitled Judgment Liens, Garnishment, Execution, Turnover Proceedings, Receiverships Under the DPTA, and “Other Stuff”.

The levy on real property merely requires that the officer endorse the levy on the writ; however, levy on personal property requires seizure of the personal property. Tex. Rules Civ. P. 639. Special rules for levy on livestock running at large and shares of stock are found in Rules 640 and 641, Tex. R. Civ. P. Bulky property may be seized in place if proper procedures are taken to insure it is secure pending sale. *Smith v. Harvey*, 104 S.W. 2d 938 (Tex. App. – San Antonio 1937, writ ref’d). The constable would likely require bonded security guards.

Once the property is levied on, the execution sale is scheduled. The manner of notice, scheduling and sale depends on whether the property is real or personal property. Execution sales of real property require that notice be published in the newspaper pursuant to Rule 647 and that they occur at the courthouse door of the county where the property is

located. Tex. R. Civ. P. Rules 646a, 647 and 648. It is good practice to review the sale notice for compliance with the rules. Often the sheriff or constable’s office will require that a copy of the deed into the debtor’s name be furnished for purposes of the real estate description. In addition to notice by publication, notice is given to the defendant or his attorney as well. Tex. R. Civ. P. Rule 647. Execution sales of personal property do not require publication in the newspaper, only posting at the courthouse door and at the place where the sale is to be made, which can be where the property was seized or at some other place, for example, the office of the sheriff or constable who seized the property. While notice to the defendant of sales of personal property is not required by the rules, notice is usually given by mail. Tex. R. Civ. P. Rules 649 and 650.

Judgment creditors often consider purchasing property at execution sales. They should be cautioned that the purchaser at the execution sale receives only the interest that the defendant had in the property and that it is subject to any all and liens. Civ. Prac. & Rem. Code §34.045. An appropriate lien search should be done on any property that the judgment creditor wishes to purchase, just as if the purchase was a regular asset sale. The judgment creditor can purchase at the execution sale by bidding credits to the judgment; however, the judgment creditor may still be required to come out of pocket for costs and commissions associated with the sale. *Blum v. Rogers*, 71 Tex. 669, 9 S.W. 595 (1888); costs of levy and commissions charged on sales proceeds vary from county to county. Any person, including the judgment creditor, who wishes to purchase real property at execution sale, must comply with the requirements of the Civil Practices and Remedies Code which provide among other things that the person show that there are no delinquent ad valorem taxes owed by the person in that county. Civ. Prac. & Rem. Code §34.0445.

While property subject to liens can be levied upon pursuant to Texas Rules of Civil Procedure Rule 643, one should be aware of a line of cases that would give priority to creditors with security interests in personal property. See *Grocers Supply v. Intercity Investment Properties, Inc.*, 795 S.W. 2d 225 (Tex. App. – Houston [14th Dist.] 1990, no writ) wherein the court held that a prior perfected security interest holder who has right to possession of the property has superior rights over a ‘mere’ judgment creditor. This author believes that this line of cases is subject to challenge with a strict reading of Rule 643 as well as Civ. Prac & Rem. Code §34.004, which was not even mentioned in the *Grocers Supply* case and which provides that mortgaged property may not be seized if the mortgagee points out other property of the debtor in the county

that is ‘sufficient to satisfy the execution’. This would indicate that if the mortgagee cannot point out other property then the mortgaged property can be seized. Note that comments in revised Article 9, section 9.401. §9.401 states that “whether a debtor’s rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this chapter” and the comments go on to say: “6. Rights of Lien Creditors. Difficult problems may arise with respect to attachment, levy, and other judicial procedures under which a debtor’s creditors may reach collateral subject to a security interest. For example, an obligation may be secured by collateral worth many times the amount of the obligation. If a lien creditor has caused all or a portion of the collateral to be seized under judicial process, it may be difficult to determine the amount of the debtor’s “equity” in the collateral that has been seized. The section leaves resolution of this problem to the courts. The doctrine of marshaling may be appropriate.” Law ‘other than this chapter’ could very well be Civ. Prac. & Rem. Code §34.004.

While pursuing the remedy of execution while a case is on appeal may encourage the posting of a supersedeas bond, one should be aware that a person is entitled to recover his property seized by a writ of execution if the judgment is later reversed or set aside and that, if the property has been sold, a person who is otherwise entitled to recover his property is entitled to recover from the judgment creditor the market value of the property sold at the time of the sale. This exposure presents a consideration for whether to proceed with the execution sale pending appeal. Tex. Civ. Prac. & Rem. Code §34.021 and 34.022.

D. Garnishment

Garnishment is available after judgment if (1) the creditor has a valid and subsisting judgment against the debtor, (2) the debtor has not filed an approved supersedeas bond, and (3) the creditor swears that, within his knowledge, the judgment debtor does not possess property in Texas subject to execution sufficient to satisfy the judgment. Tex. Civ. Prac. & Rem. Code Ann. §63.001(3). Judgment is final and subsisting for the purpose of garnishment from and after the date it is signed. Tex. R.C. P. Rule 657. The garnishment action is a separate suit from the main cause, but it is ancillary and therefore should be brought in the same court, i.e. if the original judgment was taken in the 153rd judicial district court, then the garnishment action should be filed in the same court. Townsend v. Fleming, 64 S.W. 1006 (Tex. Civ. App. 1901, no writ) Harvey v. Wichita National Bank, 113 S.W. 2d 1022 (Tex. Civ. App. – Fort Worth, 1938, no writ).

Unlike pre-judgment garnishment actions, the writ of garnishment is issued on the application and does not require a court order. Tex. R. C. P. Rule 658. The writ should be served on the garnishee by a sheriff or constable. Lawyers Civil Process, Inc. v. State of Texas, 690 S.W. 2d 939 (Tex. App. – Dallas, 1985, no writ) held that the writ must be served by a sheriff or constable and not by private process. See discussion under Execution Supra regarding amendments to Tex. R. C. P. Rule 103 effective July 1, 2005, which some interpret to expand the service of writs of garnishment to private process. This author will not advise the use of private process for writs of garnishment without court order.

A copy of the writ with specific notice language to the judgment debtor, the application and accompanying affidavit should be served on the judgment debtor as soon as practical after service of the writ on the garnishee, but this service can be done pursuant to Rule 21a. See Tex. R. C. P. Rule 663a for notice language.

Banks are the most common of garnissees, with bank account balances the target of the writ. However, the scope of the writ of garnishment is not limited to indebtedness, but also to ‘effects’ in the possession of the garnishee. Tex. R. C. P. Rule 661. The writ can reach items in the depositor’s safety deposit box, stocks, bonds, or any personal property items of the judgment debtor in the possession of the garnishee. Basically, any third party indebted to the judgment debtor or holding non exempt personal property of the judgment debtor can be a garnishee.

Historically, writs of garnishment were served on bank presidents and vice presidents. As branch banking became popular, banks often designated a ‘branch’ and officer at the branch to be available to accept writs of garnishment. Service of writs of garnishment is now governed by Section 59.008 of the Finance Code, pursuant to Section 63.008 of the Civil Practices and Remedies Code. Writs of garnishment served on financial institutions that appoint an agent for process are not effective if served or delivered to an address other than the address designated, although the customer bears the burden of preventing or limiting a financial institution’s compliance with the writ. Finance Code §59.008 and related §201.102 and 201.103.

Additional issues related to garnishment of banks include locating the bank account and the bank’s rights of offset. Bank account location services should be utilized with extreme caution. If the information has been gained by false pretenses, criminal penalties could be imposed on the one using the information

under the Fraudulent Access to Financial Information portion of the Gramm-Leach-Bliley Act, 15 U.S.C. 6821, et seq. Bank account information is best gained through discovery or through dealings with the judgment debtor. Some collection attorneys keep copies of checks received from debtors, other buy a small item from the debtor's store with a check and obtain deposit and check clearing information from the returned check. A stealth investigator may watch for bank pickups and deliveries to determine a deposit relationship. The location of the judgment debtor's bank accounts is only the beginning of the inquiry. If the judgment debtor has a depository relationship with a particular financial institution, he or she may also have a lending relationship with the financial institution. If so, the service of the writ of garnishment may trigger an offset of the depositor's account against outstanding obligations. Therefore, a discovery of liabilities to the institution is also needed. Formal discovery can be done as discussed above. Informally, one can also check for outstanding UCCs by searching <http://direct.sos.state.tx.us/>. Banks often enhance their common law rights of offset with contractual rights in their security agreements and account documents. Contrasting views on the bank's right of offset after service of a writ of garnishment are addressed in Soussan and Cooper-Hill, A Bank's Right of Offset After Service of Writ of Garnishment, 48 Tex. B.J. 638 (1985), and Vaughan and Messer, A Bank's Right of Offset After Service of Writ of Garnishment-A Reconciliation of San Felipe National Bank v. Caton, 54 Tex. B. J. 368 (1991). See also San Felipe National Bank v. Caton, 668 S.W. 2d 804 (Tex. Civ. App. – Houston [14th Dist.] 1984, no writ).

Judgment creditors are often anxious to proceed with garnishment if they are aware of the judgment debtor's banking relationship. However, the client should be cautioned about the strict grounds required for a post judgment garnishment. Cash in a bank account may seem like an easy way to get the judgment paid, but one must swear that "within plaintiff's knowledge, the defendant does not have property in Texas subject to execution sufficient to satisfy the judgment." Civ. Prac. & Rem. Code §63.001(3). The creditor has a duty to make reasonable inquiry whether such property exists. Massachusetts v. Davis, 160 S.W. 2d 543, 554 (Tex. Civ. App. – Austin, 1942), aff'd in part and rev'd. in part on other grounds, 140 Tex. 398, 168 S.W. 2d 216 (1942), cert. denied, 320 U.S. 210 (1943). If the plaintiff knows that the debtor actually has property within the state subject to execution sufficient to satisfy the debt, wrongful garnishment may occur. King v. Tom, 352 S.W. 2d 910 (Tex. Civ. App. – El Paso 1961, no writ); Griffin v. Cawthon, 77 S.W. 2d 700 (Tex. Civ. App. – Fort Worth 1934, writ ref'd).

E. Turnover Proceedings

Turnover proceedings are a unique post judgment remedy governed by Sections 31.002, 31.0025 and 31.010 of the Civil Practices and Remedies Code and interpretive case law. There are no rules of civil procedure associated with the proceeding. The statute states that the judgment creditor is 'entitled to aid' from the court to reach property owned by the judgment debtor that cannot readily be attached or levied on by ordinary legal process and is not exempt from attachment, execution or seizure for the satisfaction of liabilities. The courts have held that the statute does not require that a judgment creditor first exhaust legal remedies such as attachment, execution, and garnishment, before seeking turnover relief. Tex. Civ. Prac. & Rem. Code Ann. §31.002(a)(1) and (2). Hennigan v. Hennigan, 666 S.W. 2d 322 (Tex. App. – Houston [14th] 1984), writ ref'd n.r.e. per curium, 677 S.W. 2d 495 (Tex. 1984). Because of this interpretation of the statute and the ability to recover attorney fees in turnover proceedings, the use of the turnover proceeding has grown in popularity in many jurisdictions in Texas—often to the exclusion of the use of traditional garnishment and execution remedies. Tex. Civ. Prac. & Rem. Code §31.002(e). Still, review of a final appealable turnover order is whether the trial court abused its discretion. Barlow v. Lane, 745 S.W.2d 451 (Tex. App. – Waco 1988, writ denied); Beaumont Bank, N.A. v. Buller, 806 S.W. 2d 223 (Tex. 1991). Therefore, the breadth of turnover orders varies greatly.

The turnover order may require the debtor to turn over non exempt property in the debtor's control to a sheriff or constable for execution, otherwise apply the property to satisfy the judgment, or appoint a receiver to take possession of the non exempt property to sell it and pay the proceeds to the judgment creditor. Tex. Civ. Prac. & Rem. Code §31.002(b). Appointment of receivers is more common in some jurisdictions than in others. The property should not be turned over directly to the judgment creditor. Ex Parte Johnson, 654 S.W. 2d 415 (Tex. 1983); Lozano v. Lozano, 975 S.W.2d 63 (Tex. App. – Houston [14th Dist.] 1998, no writ).

The turnover application is usually filed as a post judgment motion in the same proceeding in which the judgment is rendered, but it can be filed in an independent proceeding. Tex. Civ. Prac. Rem. Code Section 31.002(d); see also Fox v. Citicorp Credit Services, Inc., 15 F.3d 1507 (9th Cir. 1994, no writ) which involved a garnishment action in which the court found that the venue provision of the Fair Debt Collection Practices Act applied to post judgment enforcement proceedings, thus requiring the post judgment action be filed in a different court. An independent proceeding may be useful if the debtor

and his property is in a county other than where the judgment was taken, because turnover orders are enforceable by contempt. Contempt actions are less complicated if a body attachment does not require transporting the contemnor across county lines. The statute does not address how one might bring the proceeding ‘in an independent proceeding’, but one would anticipate the need for citation to issue in order to bring the judgment debtor within the jurisdiction of the new court. Tex. Civ. Prac. Rem. Code Section 31.002(e). The ability to enforce the order by contempt is a valuable tool for securing cooperation and does not constitute imprisonment for debt. Ex Parte Buller, 834 S.W. 2d 622 (Tex. App.—Beaumont 1992, orig. proceeding); however, care should be taken when the contempt proceeding provides for payment of cash. See Ex Parte Roan, 887 S.W. 462 (Tex. App.—Dallas, orig. proceeding).

The turnover statute does not require notice to the judgment debtor. Tex. Civ. Prac. & Rem. Code Ann. Section 32.002, et seq.; ex parte post judgment collection efforts have been upheld by the Supreme Court in Endicott-Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285(1924). However, if a temporary restraining order is requested, notice to the adverse party is required unless it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice and hearing can be had. A judgment debtor about to abscond with non exempt property may be just the facts that would suggest an ex parte hearing and temporary restraining order. Tex. R. C. P. 680.

The turnover proceeding can be utilized as soon as the judgment is signed, much like the post judgment garnishment remedy, thus making it a very powerful and immediate collection tool. Childre v. Great Southwest Life Insurance Co., 700 S.W. 2d 284 (Tex. App.—Dallas 1985, no writ). Its availability continues, even during appeal, unless the judgment is superseded. Anderson v. Lykes, 761 S.W. 2d 831 (Tex. App.—Dallas 1988, orig. proceeding).

Turnover proceedings have been used as a judicial method of determining if property is exempt and thus available to satisfy the debt, Pace v. McEwen, 671 S.W. 2d 826 (Tex. Civ. App.—Houston [14th Dist.] 1981, no writ), to reach property outside of Texas, Reeves v. Federal Savings and Loan Insurance Corp., 732 S.W. 2d 380 (Tex. App.—Dallas 1987, no writ), to reach intangibles such as causes of action by requiring the assignment of same, Renger Memorial Hospital v. State, 674 S.W. 2d 828 (Tex. App.—Austin 1984, no writ), to reach small amounts of property like accounts receivable, Arndt v. National Supply Co., 650 S.W. 2d

547 (Tex. App.—Houston [14th Dist] 1982, writ ref'd n.r.e), and property such as stock and related corporate receipts. Newman v. Toy, 926 S.W. 2d 629 (Tex. App.—Austin 1996, writ denied). The turnover of paychecks and wages for debts other than child support is now statutorily prohibited, Tex. Civ. Prac. & Rem. Code. Section 31.002(f) and Section 31.0025.; however, turnover of income from a business or funds due an independent contractor is appropriate. Hennigan v. Hennigan, supra; Ross v. 3D Tower Limited, 824 S.W. 2d 270 (Tex. App.—Houston [14th Dist.] 1992, writ denied); Campbell v. Stucki, 220 S.W.3d 562(Tex. App.-Tyler 2007, no pet.). Note that assignments of causes of action are not without limitation. See: the following cases involving denial of turnover of causes of action against oneself, Commerce Savings Association v. Welsh, 783 S.W. 668 (Tex. App.—San Antonio 1989, no writ); Criswell v. Ginsberg & Foreman, 843 S.W. 304 (Tex. App.—Dallas 1991, no writ); Associated Ready Mix, Inc. v. Douglas, 843 S.W. 2d 758 (Tex. App.—Waco 1992, orig. proceeding). Assignment of legal malpractice claims have been held invalid in Zuniga v. Groce, Locke & Hebdon, 878 S.W. 2d 313 (Tex. App.—San Antonio 1994, writ refused); Charles v. Tamez, 878 S.W.2d 201 (Tex. App.—Corpus Christi 1994, writ denied),

Turnover orders affecting property held by a financial institution are required to be served in the same manner as garnishments. Tex. Civ. Prac. & Rem. Code §31.002(g). Additional special requirements for turnover orders as they relate to financial institutions are found at Tex. Civ. Prac. and Rem. Code §31.010.

The statute states that the court ‘may order the judgment debtor to turn over non exempt property’; or ‘otherwise apply the property to the satisfaction of the judgment.’ Tex. Civ. Prac. & Rem. Code §31.002(b)(1) and (2). Case law is split on whether the court can order third parties to turn over non exempt assets of the judgment debtor. International Paper Company v. Garza, 872 S.W. 2d 18 (Tex. App.—Corpus Christi 1994, orig. proceeding); Republic Insurance Company v. Millard, 825 S.W. 2d 788 (Tex. App.—Houston [14th Dist.] 1992, orig. proceeding). The Supreme Court has not ruled on the point; however, in a general discussion of the turnover remedy, the court has stated that the turnover action can be brought “against one or more parties other than the judgment debtor.” Schultz v. The Fifth Judicial District Court of Appeals, 810 S.W. 2d 738 (Tex. 1991, orig. proceeding). The problem with third party turnover actions is that there is no clear procedure for the trial court’s obtaining personal jurisdiction over the third party so that its order is enforceable by contempt. Assuming the judgment debtor can be located, the judgment debtor can be ordered to turn over property that is in his

control, even if in the possession of a third party. Norsul Oil & Mining Ltd. v. Commercial Equipment Leasing Co., 703 S.W. 2d 345 (Tex. App. – San Antonio 1985, no writ). If a third party has the judgment debtor's personal property, a garnishment would be an appropriate remedy. See discussion above.

F. Other Remedies

While post judgment discovery, judgment liens, garnishments, executions and turnovers are the most used post judgment remedies, a variety of additional remedies may be appropriate. An additional remedy for collection of judgments based on Deceptive Trade Practices Act causes of action provides for receiverships with power to manage and operate the defendant's business or to manage the defendant's finances. Tex. Bus. & Com. Code §17.59 (Vernon 1987). The receivership provisions under the DTPA may prove to be broader than those under the turnover proceeding, depending on the facts of the case.

A Master in Chancery may be appointed under Texas Rules of Civil Procedure Rule 171, although this is a rarely used procedure.

Charging orders may be used to reach a judgment debtor's interest in a general or limited partnership by ordering payment to the creditor out of the debtor's interest in the partnership. Similarly, a member's interest in a limited liability company may be charged with payment of a judgment. A complete discussion of the history and application of the Texas Revised Limited Partnership Act, The Texas Limited Liability Company Act and the Business Organizations Code is beyond the scope of this paper; however, this author's paper on Post Judgment Remedies discusses the evolution of the charging order and the application of the particular statutes at www.dbrownlaw.com.

If the judgment debtor dies after the judgment is taken, execution will not issue. The judgment creditor must proceed under the appropriate probate code provisions for claims against the estate and obtain payment in the due course of administration. Tex. R. Civ. P. R. 625. A discussion of the claims process under the Texas Probate Code is beyond the scope of this article.

Finally, though not considered a traditional post judgment remedy, a fraudulent transfer suit becomes a post judgment remedy if the fraudulent transfer was not discovered before judgment, or if the fraudulent transfer occurred after judgment. Tex. Bus. & Com. Code Ann. §24.001 et seq. Fraudulent transfers are often the judgment debtor's way of marking their most valuable asset!

V. CONCLUSION

This paper only scratches the surface of the requirements and procedures associated with post judgment remedies. This author routinely posts updated seminar papers on post-judgment remedies at www.dbrownlaw.com. A very useful tool for any law library utilized by creditors' rights attorneys and general litigators alike is the Texas Collections Manual published by the State Bar of Texas. It contains a more in depth discussion of each of the remedies, plus forms, checklists and practice tips.

