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**POST-JUDGMENT COLLECTION AND REMEDIES:  
GETTING RELIEF WITHOUT GETTING BURNED!**

Southern District of Texas Bankruptcy Bench Bar Conference  
June 18-20, 2014

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## So you have a Judgment ... Now what?

- **Federal Rules of Bankruptcy Procedure, Rule 7069. Execution**

- **“Rule 69 F. R. Civ. P. applies in adversary proceedings.”**

- **Federal Rules of Civil Procedure, Rule 69. Execution**

- **“(a) In General.**

**(1) Money Judgment; Applicable Procedure. ...The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located. ...**

**(2) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.”**



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## So you have a Judgment ... Now what? (cont'd)

- Nearly always best to domesticate in state court per Chapter 35, Tex. Civ. Prac. & Rem. Code, and pursue remedies in the state court action
- Commercial vs. Consumer
- “Personal, family, or household purposes”
  - **Avoiding Fair Debt Collection Practices Act Claims (Curt M. Langley)**  
- <http://www.jw.com/publications/article/1490>
  - **Latest Developments in the Federal and Texas Fair Debt Collection Practices Acts (Curt M. Langley)**  
- <http://www.jw.com/publications/article/1168>



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## **BASIC NON-JUDICIAL ASSET SEARCHING:**

- **Appraisal District records accessible online**
- **Composition and entity status information through Secretary of State**
- **Corporate privilege information through the Comptroller of Public Accounts**
  - **Personal liability for officers and directors under Texas Tax Code §171.255**
- **UCC searches at Secretary of State**
- **Accurint.com, PublicData.com**
- **Private Investigators and Asset Searchers**



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## POST-JUDGMENT DISCOVERY

- Use any pre-trial discovery tool post-judgment, Rule 621a, Tex. R. Civ. P.
- Post-judgment discovery is not limited like pre-trial discovery, Rule 190.6, Tex. R. Civ. P.
- Tailor post-judgment discovery to individual and to entity due to exemption issues
- Begin as soon as you get the Judgment
  - Encourage the posting of a *supersedeas* bond
  - Post-Judgment Discovery (Ethics) (Curt M. Langley)
    - <http://www.jw.com/publications/article/433>



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## ABSTRACT OF JUDGMENT LIENS

- **Created by the proper recording and indexing of an Abstract of Judgment, Chapter 52, Tex. Property Code**
  - **Do as soon as you get the judgment, even if a *supersedeas* bond is filed**
  - **File wherever the debtor has property, works, lives, or where family is from**
  - **It attaches to any non-exempt real property in the county where filed and after-acquired property as well**



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## ABSTRACT OF JUDGMENT LIENS (cont'd)

- **Duration and Dormancy**
  - **The lien continues for ten years from date of recordation and indexing if the Judgment does not become dormant, Tex. Prop. Code §52.006**
  - **Keep the Judgment alive by obtaining a Writ of Execution within ten years after the rendition of the Judgment and using due diligence, thus extending the life of the Judgment for ten years from the issuance of the Writ of Execution, Tex. Civ. Prac. & Rem. Code §34.001**
  - **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**



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## **EXECUTION**

- **Most potent civil Writ in the law!**
- **Generally can issue 30 days after Judgment, unless there is an urgent need to get Writ and Affidavit of exigency is supplied**
- **Who handles service of the Writ: depends on the county whether Sheriff or Constable and whether precinct-specific**
- **Give the Sheriff or Constable as much information about the debtor and its assets as possible**
- **Know what's exempt and what's not – entities have no exempt property**
- **Real property levy requires endorsement on the Writ, whereas personal property levy requires seizure**



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## **EXECUTION (cont'd)**

- **Real property sale notices must be published in newspaper and served on the debtor; sometimes you are required to furnish copy of the deed into the debtor; good idea to do last-deed-and-lien (limited title certificate) search**
- **Personal property sale notices only require posting at courthouse door and place where sale is made; no requirement to serve on debtor, but most officers will serve on debtor by certified mail**
- **If your client wants to purchase remember:**
  - **Takes subject to all liens;**
  - **Can bid credit to Judgment, but must pay officer commissions**



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## EXECUTION (cont'd)

- **Property subject to liens**
  - **May be levied on per Rule 643, Tex. R. Civ. P, but be aware of *Grocers Supply vs. Intercity Investment Properties, Inc.*, 795 S.W.2d 225 (Tex.App.-Houston [14<sup>th</sup> Dist.] 1990, no writ.)**
- **Can levy even when on appeal if no *supersedeas* bond posted, but if you lose on appeal the judgment-debtor is entitled to recovery his property or its value**



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## 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)**
  - (4) **Unsuccessful execution (*nulla bona*) can predicate the required affidavit**
- **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**



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## **GARNISHMENT (cont'd)**

- **A copy of the Writ with specific notice language to the judgment-debtor 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 and Rule 663a, Tex. R. Civ. P.**
- **Bank Garnishment**
  - **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**



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## **GARNISHMENT (cont'd)**

- **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 YOU!**
- **Service of the Writ of Garnishment may trigger an offset of the depositor's account against outstanding obligations**
- **Risk of wrongful 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.**



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## TURNOVER

- **Non-traditional, statutory remedy, no Rules of Civil Procedure**
  - **§31.002, Tex. Civ. Prac. & Rem. Code**
  - **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**
  - **Can recover attorney fees – unlike in execution or garnishment – so use has grown over the years**

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## **TURNOVER (cont'd)**

- **Order can require:**
  - **turnover of non-exempt assets in debtor's control to Sheriff or Constable for sale at execution**
  - **otherwise apply the property to satisfy the Judgment**
  - **appoint a receiver to take possession**
- **Filed as a post-judgment motion or in a separate proceeding**
- **Enforceable by contempt**
- **Can be *ex parte***
- **Don't have to wait 30 days**
- **Caselaw is split on third-party turnovers**



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**HAPPY HUNTING!**

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