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Turnover & Receiverships

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POP QUIZ

The Answers May Not Be What You Think!
(The answers follow.)

1. Which of these elements are required to prove up a turnover receivership?
 - a. Applicant has an unsatisfied judgment
 - b. 30 days have passed since the judgment
 - c. Applicant has exhausted its remedies
 - d. Other methods of collecting the judgment have failed
 - e. Judgment debtor owns non-exempt property
 - f. Judgment debtor's non-exempt property is difficult to levy upon by ordinary process
 - g. The property is in danger of being lost, moved or materially injured
 - h. Judgment debtor has notice of the hearing
 - i. All of the above
2. Your client bought some land at a foreclosure sale. A receiver had been appointed over the debtor's assets, but the receiver did not file a *lis pendens* or any other notice in the county records. The receiver claims the substitute trustee's deed is void as a matter of law. Is that right?
3. A judgment creditor is *entitled* to turnover relief, just like the statute says. True or False?
4. The judgment debtor's non-exempt property is in the hands of a third party. Which of the following are viable options?
 - a. Ask the trial court to put the third party into receivership
 - b. Ask the trial court for an order compelling the third party to turn over the property
 - c. Ask the trial court for an order compelling the judgment debtor to turn over the property
 - d. Ask the trial court to appoint a receiver to seize the judgment debtor's property
 - e. File a new action against the third party, such as alter ego or fraudulent conveyance
 - f. Obtain a writ of garnishment against the third party
 - g. All of the above
5. The judgment debtor's property has been transferred to his alter ego corporation, and the corporation says it owns the property. Which of the following are viable options?
 - a. Ask the trial court for an order compelling the alter ego corporation to turn over the property
 - b. Ask the trial court to put the alter ego corporation into receivership
 - c. Ask the trial court for an order compelling the judgment debtor to turn over the property
 - d. Ask the trial court to appoint a receiver to seize the judgment debtor's property
 - e. File a new action against the alter ego corporation
 - f. All of the above

6. The debtor's Chapter 13 has cratered and the trustee has plan payments that have not been distributed yet. Can a judgment creditor get the money via turnover?
7. You've proved that the defendant owns 15 properties in Texas. You argue that at least some of them must be rental property and rents are intangibles which cannot be readily attached by ordinary legal process. Can you get turnover?
8. Is a turnover order interlocutory or is it a final, appealable order?
9. The debtor's property described in the receivership order is in the hands of the court as of when the order is signed. True or False ?

POP QUIZ ANSWERS

1. a, e, and f
Learn more in sections IV, V, XX and on p. iv
2. Yes.
Learn more in section XIII.
3. Maybe. Different districts have ruled differently.
Learn more in section III A.
4. b, c, d & f are valid options.
Learn more in section VI.
5. c and e, depending on the situation.
Learn more in section VI & read about Plaza Court Ltd, section VI J 7.
6. Not if the plan payments were wages paid directly by the employer to the Chapter 13 trustee.
Learn more in section III F.
7. Proof of rentals and other accounts owed to the defendant would support turnover relief. But be sure you can prove up that they are rentals and that the defendant is actually entitled to the rent. Proof that the defendant owns real property and the argument that some of it must be rental property was not enough in the *Suttles* case.
Learn more in section IV E.
8. The portions of a turnover order that are in the nature of a mandatory injunction are deemed to be a final, appealable order. If the time to appeal the order has expired, but the judge signs an amended order, the new parts of the amended order are appealable until the time to file an appeal runs on them (assuming the new parts are in the nature of an injunction).
Learn more in section X.
9. The property may be in the court's control before the order is actually signed.
Learn more in section XIII C.

The Turnover Statute

31.002 Collection Of Judgment Through Court Proceeding.

- (a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that:
 - (1) cannot readily be attached or levied on by ordinary legal process; and
 - (2) is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.
- (b) The court may:
 - (1) order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution;
 - (2) otherwise apply the property to the satisfaction of the judgment; or
 - (3) appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.
- (c) The court may enforce the order by contempt proceedings or by other appropriate means in the event of refusal or disobedience.
- (d) The judgment creditor may move for the court's assistance under this section in the same proceeding in which the judgment is rendered or in an independent proceeding.
- (e) The judgment creditor is entitled to recover reasonable costs, including attorney's fees.
- (f) A court may not enter or enforce an order under this section that requires the turnover of the proceeds of, or the disbursement of, property exempt under any statute, including Section 42.0021, Property Code. This subsection does not apply to the enforcement of a child support obligation or a judgment for past due child support.
- (g) With respect to turnover of property held by a financial institution in the name of or on behalf of the judgment debtor as customer of the financial institution, the rights of a receiver appointed under Subsection (b)(3) do not attach until the financial institution receives service of a certified copy of the order of receivership in the manner specified by Section 59.008, Finance Code.
- (h) A court may enter or enforce an order under this section that requires the turnover of nonexempt property without identifying in the order the specific property subject to turnover.

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Receivership & Turnover

I. INTRODUCTION AND SCOPE

This article discusses the basics of turnover law, including when turnover may be used against a third party. It shows what a turnover receiver can do, from the perspective of a receiver with over 15 years of experience, and explains what you need to know to begin using turnover and turnover receivers in your practice.

II. HISTORY

Known as the "turnover" statute, Tex. Rev. Civ. Stat. Ann. art. 3827a was enacted in 1979. The statute was codified in 1985, as § 31.002 of the Texas Civil Practice and Remedies Code. Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (Vernon 2008). It has been amended in 1989, 1999 and 2005.

Prior to the turnover statute, it was too easy for a defendant to conceal property such as stock certificates and negotiable instruments from a levying officer. The traditional collection methods were inadequate for collecting intangibles such as accounts receivable and the debtor's interest in a cause of action. Under the turnover statute, the burden is placed on the defendant to identify and produce its leviable property and related documents. *Id.*; *Ex parte Johnson*, 654 S.W. 2d 415, 418 (Tex. 1983); *Cross, Kieschnick & Co. v. Johnston*, 892 S.W.2d 435, 438 (Tex. App.—San Antonio 1994, no writ); David Hittner, *Texas Post-Judgment Turnover & Receivership Statutes*, 45 Tex. Bar J. 417, 417-18 (1982) (citing House and Senate committee reports).

The statute is meant to put a reasonable remedy in the hands of the diligent creditor. The statute is open-ended in that it allows a judgment creditor to get aid in collection from the Court in the form of an order which requires the debtor to bring to the Court all documents or property used to satisfy a judgment. *Id.*

III. THE TURNOVER STATUTE: § 31.002 COLLECTION OF JUDGMENT THROUGH COURT PROCEEDING

The turnover statute provides that a judgment creditor is entitled to aid from a court in reaching the debtor's non-exempt assets. The creditor has to show that the judgment debtor owns assets that are non-exempt and difficult to levy upon by ordinary process.

Once a judgment is satisfied, the turnover order "looses its teeth and [is] of no further force and effect." *Pandozy v. Beaty*, 254 S.W.3d 613 (Tex. App.—Texarkana 2008, no pet.) (Issues in appeal regarding a turnover order were moot because the judgment was paid).

A. "Entitled" To Turnover Relief?

1. Turnover Relief is Discretionary

The statute states that the judgment creditor is "entitled" to aid from the court (assuming the elements are proved up). Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (a) (Vernon 2008). Some districts read the turnover statute as discretionary, because 31.002 (b) states the court *may* grant the turnover relief set out in subsections (b) (1) – (3). *Barlow v. Lane*, 745 S.W.2d 451, 454 (Tex.App.—Waco 1988, writ denied); *Charles v. Tamez* 878 S.W.2d 201 (Tex.App.—Corpus

Christi 1994, writ denied); *Beeler v. Fuqua*, 351 S.W.3d 428 (Tex. App.-- El Paso, 2011, pet. filed).

2. The Creditor Is Entitled... To A Hearing

In 1988, the Fifth District held that a judgment creditor is entitled to a hearing on turnover, so long as the judgment has not been superseded. The trial court had dismissed an application for turnover for want of jurisdiction while an appeal was pending. *Anderson v. Lykes*, 761 S.W.2d 831, 833-34 (Tex. App.-Dallas 1988, orig. proceeding).

3. The Creditor May Be Entitled To Turnover In Dallas

A creditor may be entitled to turnover relief in the Fifth District. In 2010, The Fifth District held that a court abused its discretion in denying an application for a turnover order. The evidence showed that the judgment debtor, a corporation, owned 100% of the stock of another corporation and the debtor's principal testified that he was unwilling to turnover the stock. *Europa International Ltd v. Direct Access Trader Corp*, 315 S.W.3d 654 (Tex. App.-- Dallas, 2010, no pet.).

B. § 31.002 (b) (1)

The court may order the debtor to turn over its nonexempt assets and related documentation to a sheriff or constable. § 31.002 (b) (1).

C. §31.002(b) (2)

The court may otherwise apply the property to the satisfaction of the judgment. §31.002(b)(2). This section allows the court to order money placed into the registry of the court. Do not have property turned over directly to the creditor. "The potential for error or abuse where turnover is ordered directly to judgment creditors is obvious, considering that the statute allows ex parte entry of the order without notice and hearing." *Ex parte Johnson*, 654 S.W.2d 415, 419 (Tex. 1983); *Lozano v. Lozano*, 975 S.W.2d 63 (Tex. App.—Houston [14th Dist.] 1998, pet. denied).

D. §31.002(b) (3)

The court may appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment. § 31.002 (b) (3).

E. § 31.002 (e)

The judgment creditor is entitled to recover its costs, including reasonable attorneys fees. § 31.002 (e).

F. Exempt Property

Exempt property is not subject to turnover. § 31.002 (a) (2).

1. Proceeds of Exempt Property

The proceeds of exempt property are not subject to turnover, except for enforcement of a child support obligation or a judgment for past due child support. §31.002 (f).

Section 31.002 (f) was added to the turnover statute in 1989, prohibiting the turnover of proceeds of, or disbursement of property exempt under any statute (except for enforcement of a

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