CIVIL PRACTICE AND REMEDIES CODE

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE C. JUDGMENTS

CHAPTER 34. EXECUTION ON JUDGMENTS

SUBCHAPTER A. ISSUANCE AND LEVY OF WRIT

Sec. 34.001. NO EXECUTION ON DORMANT JUDGMENT. (a) If a writ of execution is not issued within 10 years after the rendition of a judgment of a court of record or a justice court, the judgment is dormant and execution may not be issued on the judgment unless it is revived.

(b) If a writ of execution is issued within 10 years after rendition of a judgment but a second writ is not issued within 10 years after issuance of the first writ, the judgment becomes dormant. A second writ may be issued at any time within 10 years after issuance of the first writ.

(c) This section does not apply to a judgment for child support under the Family Code.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 31, eff. June 19, 2009.

Sec. 34.002. EFFECT OF PLAINTIFF'S DEATH. (a) If a plaintiff dies after judgment, any writ of execution must be issued in the name of the plaintiff's legal representative, if any, and in the name of any other plaintiff. An affidavit of death and a certificate of appointment of the legal representative, given under the hand and seal of the clerk of the appointing court, must be filed with the clerk of the court issuing the writ of execution.

(b) If a plaintiff dies after judgment and his estate is not administered, the writ of execution must be issued in the name of all plaintiffs shown in the judgment. An affidavit showing that administration of the estate is unnecessary must be filed with the clerk of the court that rendered judgment. Money collected under the execution shall be paid into the registry of the court, and the

court shall order the money partitioned and paid to the parties entitled to it.

(c) Death of a plaintiff after a writ of execution has been issued does not abate the execution, and the writ shall be levied and returned as if the plaintiff were living.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.003. EFFECT OF DEFENDANT'S DEATH. The death of the defendant after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ must be recognized and enforced by the county court in the payment of the debts of the deceased.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.004. LEVY ON PROPERTY CONVEYED TO THIRD PARTY. Property that the judgment debtor has sold, mortgaged, or conveyed in trust may not be seized in execution if the purchaser, mortgagee, or trustee points out other property of the debtor in the county that is sufficient to satisfy the execution.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.005. LEVY ON PROPERTY OF SURETY. (a) If the face of a writ of execution or the endorsement of the clerk shows that one of the persons against whom it is issued is surety for another, the officer must first levy on the principal's property that is subject to execution and is located in the county in which the judgment is rendered.

(b) If property of the principal cannot be found that, in the opinion of the officer, is sufficient to satisfy the execution, the officer shall levy first on the principal's property that can be found and then on as much of the property of the surety as is necessary to satisfy the execution.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER B. RECOVERY OF SEIZED PROPERTY

Sec. 34.021. RECOVERY OF PROPERTY BEFORE SALE. A person is

entitled to recover his property that has been seized through execution of a writ issued by a court if the judgment on which execution is issued is reversed or set aside and the property has not been sold at execution.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.022. RECOVERY OF PROPERTY VALUE AFTER SALE. (a) A person is entitled to recover from the judgment creditor the market value of the person's property that has been seized through execution of a writ issued by a court if the judgment on which execution is issued is reversed or set aside but the property has been sold at execution.

(b) The amount of recovery is determined by the market value at the time of sale of the property sold.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER C. SALE

Sec. 34.041. SALE AT PLACE OTHER THAN COURTHOUSE DOOR; DATE AND TIME OF SALE. (a) If the public sale of real property is required by court order or other law to be made at a place other than the courthouse door, sales under this chapter shall be made at the place designated by that court order or other law.

(a-1) The commissioners court of a county by official action may authorize the officer charged with conducting a public sale of real property taken in execution of a judgment to conduct a public auction using online bidding and sale. The commissioners court may adopt rules governing online auctions authorized under this subsection. Rules adopted by the commissioners court under this subsection take effect on the 90th day after the date the rules are published in the real property records of the county.

(a-2) Subsection (a-1) does not apply to a sale of real property conducted under Section 51.002, Property Code.

(b) The commissioners court of a county may designate an area other than an area at the county courthouse where public sales of real property under this chapter will take place that is in a public place within a reasonable proximity of the county courthouse

as determined by the commissioners court and in a location as accessible to the public as the courthouse door. The commissioners court shall record that designation in the real property records of the county. A designation by a commissioners court under this section is not a ground for challenging or invalidating any sale. Except for a sale conducted under Subsection (a) or (a-1), a sale must be held at an area designated under this subsection if the sale is held on or after the 90th day after the date the designation is recorded. The commissioners court may by order authorize a county official or employee to identify separate locations within the designated area for the conduct of sales under this section and for the conduct of sales by peace officers under other laws.

(c) A sale of real property under this subchapter must take place between 10 a.m. and 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subsection.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 642 (H.B. 699), Sec. 1, eff. October 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 133 (H.B. 1128), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 133 (H.B. 1128), Sec. 2, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 314 (H.B. 1382), Sec. 1, eff. September 1, 2023.

Sec. 34.042. SALE OF CITY LOTS. If real property taken in execution consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel must be offered for sale separately unless not susceptible to separate sale because of the character of improvements.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.043. SALE OF RURAL PROPERTY. (a) If real property taken in execution is not located in a city or town, the defendant in the writ who holds legal or equitable title to the property may divide the property into lots of not less than 50 acres and designate the order in which those lots shall be sold.

(b) The defendant must present to the executing officer:

(1) a plat of the property as divided and as surveyed by the county surveyor of the county in which the property is located; and

(2) field notes of each numbered lot with a certificate of the county surveyor certifying that the notes are correct.

(c) The defendant must present the plat and field notes to the executing officer before the sale at a time that will not delay the sale as advertised.

(d) When a sufficient number of the lots are sold to satisfy the amount of the execution, the officer shall stop the sale.

(e) The defendant shall pay the expenses of the survey and the sale, and those expenses do not constitute an additional cost in the case.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.044. STOCK SHARES SUBJECT TO SALE. Shares of stock in a corporation or joint-stock company that are owned by a defendant in execution may be sold on execution.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.0445. PERSONS ELIGIBLE TO PURCHASE REAL PROPERTY. (a) An officer conducting a sale of real property under this subchapter may not execute or deliver a deed to the purchaser of the property unless the purchaser exhibits to the officer:

(1) an unexpired written statement issued to the person in the manner prescribed by Section 34.015, Tax Code, showing that the county assessor-collector of the county in which the sale is conducted has determined that:

(A) there are no delinquent ad valorem taxes owed by the person to that county; and

(B) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality; or

(2) the written registration statement issued to the person in the manner prescribed by Section 34.011, Tax Code, showing that the person is a registered bidder at the sale at which the property is sold.

(b) An individual may not bid on or purchase the property in the name of any other individual. An officer conducting a sale under this subchapter may not execute a deed in the name of or deliver a deed to any person other than the person who was the successful bidder.

(c) The deed executed by the officer conducting the sale must name the successful bidder as the grantee and recite that the successful bidder exhibited to that officer:

(1) an unexpired written statement issued to the person in the manner prescribed by Section 34.015, Tax Code, showing that the county assessor-collector of the county in which the sale was conducted determined that:

(A) there are no delinquent ad valorem taxes owed by the person to that county; and

(B) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality; or

(2) the written registration statement issued to the person in the manner prescribed by Section 34.011, Tax Code, showing that the person is a registered bidder at the sale at which the property is sold.

(d) If a deed contains the recital required by Subsection (c), it is conclusively presumed that this section was complied with.

(e) A person who knowingly violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

(f) To the extent of a conflict between this section and any other law, this section controls.

(g) This section applies only to a sale of real property under this subchapter that is conducted in:

(1) a county with a population of 250,000 or more; or

(2) a county with a population of less than 250,000 in which the commissioners court by order has adopted the provisions of this section.

Acts 2003, 78th Leg., ch. 1010, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 86 (S.B. 644), Sec. 1, eff. May 17, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1126 (H.B. 3951), Sec. 3, eff. January 1, 2016.

Sec. 34.045. CONVEYANCE OF TITLE AFTER SALE. (a) When the sale has been made and its terms complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest, and claim that the defendant in execution had in the property sold.

(b) If the purchaser complies with the terms of the sale but dies before the conveyance is executed, the officer shall execute the conveyance to the purchaser, and the conveyance has the same effect as if it had been executed in the purchaser's lifetime.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.046. PURCHASER CONSIDERED INNOCENT PURCHASER WITHOUT NOTICE. The purchaser of property sold under execution is considered to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the defendant.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.047. DISTRIBUTION OF SALE PROCEEDS. (a) An officer shall deliver money collected on execution to the entitled party at the earliest opportunity.

(b) The officer is entitled to retain from the proceeds of a sale of personal property an amount equal to the reasonable

expenses incurred by him in making the levy and keeping the property.

(c) If more money is received from the sale of property than is sufficient to satisfy the executions held by the officer, the officer shall immediately pay the surplus to the defendant or the defendant's agent or attorney.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.048. PURCHASE BY OFFICER VOID. If an officer or his deputy conducting an execution sale directly or indirectly purchases the property, the sale is void.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER D. DUTIES AND LIABILITIES OF EXECUTING OFFICER

Sec. 34.061. DUTY TOWARD SEIZED PERSONALTY; LIABILITY. (a) The officer shall keep securely all personal property on which he has levied and for which no delivery bond is given.

(b) If an injury or loss to an interested party results from the negligence of the officer, the officer and his sureties are liable for the value of the property lost or damaged.

(c) The injured party has the burden to prove:

(1) that the officer took actual possession of the injured party's property; and

(2) the actual value of any property lost or damaged.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 3, eff. September 1, 2007.

Sec. 34.062. DUTY OF SUCCESSOR OFFICER. If the officer who receives a writ of execution dies or goes out of office before the writ is returned, his successor or the officer authorized to discharge the duties of the office shall proceed in the same manner as the receiving officer was required to proceed.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 34.063. IMPROPER ENDORSEMENT OF WRIT. (a) If an officer receives more than one writ of execution on the same day against the same person and fails to number them as received or if an officer falsely endorses a writ of execution, the officer and the officer's sureties are liable to the plaintiff in execution only for actual damages suffered by the plaintiff because of the failure or false endorsement.

(b) The plaintiff in execution has the burden to prove:

(1) the officer failed to properly number or endorse the writ of execution;

(2) the officer's failure precluded the levy of executable property owned by the judgment debtor;

(3) the executable property owned by the judgment debtor was not exempt from execution or levy; and

(4) the plaintiff in execution suffered actual damages.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 4, eff. September 1, 2007.

Sec. 34.064. IMPROPER RETURN OF WRIT. (a) An officer may file an amended or corrected return after the officer has returned a writ to a court.

(b) Once an officer receives actual notice of an error on a return or of the officer's failure to file a return, the officer shall amend the return or file the return not later than the 30th day after the date of the receipt of notice.

(c) An officer who fails or refuses to amend or file the return may be subject to contempt under Section 7.001(b).

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 4, eff. September 1, 2007.

Sec. 34.065. FAILURE TO LEVY OR SELL. (a) If an officer fails or refuses to levy on or sell property subject to execution

and the levy or sale could have taken place, the officer and the officer's sureties are liable to the party entitled to receive the money collected on execution only for actual damages suffered.

(b) The judgment creditor seeking relief under this section has the burden to prove:

(1) the judgment creditor has a valid judgment against the judgment debtor;

(2) the writ of execution was issued to the judgment creditor;

(3) the writ was delivered to the officer;

(4) the judgment creditor's judgment was unpaid and unsatisfied;

(5) the property to be levied on was subject to execution;

(6) the officer failed or refused to levy under the writ; and

(7) the amount of actual damages suffered.

(c) Property to be levied on is subject to execution for purposes of this section if the judgment creditor proves that the judgment debtor owned the property at issue, the property was accessible to the officer under the law, the property was situated in the officer's county, and the property was not exempt from execution.

(d) Before a court may find that an officer failed or refused to levy under the writ for purposes of this section, the court must find that the judgment creditor specifically informed the officer that the property was owned by the judgment debtor and was subject to execution and that the creditor directed the officer to levy on the property.

(e) In this section, "actual damages" is the amount of money the property would have sold for at a constable or sheriff's auction minus any costs of sale, commissions, and additional expenses of execution.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 4, eff. September 1, 2007.

Sec. 34.066. IMPROPER SALE. (a) If an officer sells property without giving notice as required by the Texas Rules of Civil Procedure or sells property in a manner other than that prescribed by this chapter and the Texas Rules of Civil Procedure, the officer shall be liable only for actual damages sustained by the injured party.

(b) The injured party has the burden to prove that the sale was improper and any actual damages suffered.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 4, eff. September 1, 2007.

Sec. 34.067. FAILURE TO DELIVER MONEY COLLECTED. If an officer fails or refuses to deliver money collected under an execution when demanded by the person entitled to receive the money, the officer and the officer's sureties are liable to the person for the amount collected and for damages at a rate of one percent a month on that amount if proven by the injured party.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 4, eff. September 1, 2007.

Sec. 34.068. RULES GOVERNING ACTIONS UNDER THIS CHAPTER. (a) This section applies to any claim for damages brought under Section 7.001, 34.061, 34.063, 34.065, 34.066, or 34.067 or under Section 86.023, Local Government Code.

(b) Suit shall be brought in the form of a lawsuit filed against the officer in the county in which the officer holds office.

(c) All suits must be filed not later than the first anniversary of the date on which the injury accrues.

(d) An officer or a surety may defend the action by stating and proving any defenses provided by law, including any defense that would mitigate damages.

Added by Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 5,

eff. September 1, 2007.

Sec. 34.069. PAYMENT OF DAMAGES. A county, at the discretion of the commissioners court, may pay any judgment taken against an officer under Section 7.001, 34.061, 34.063, 34.064, 34.065, 34.066, or 34.067 or under Section 86.023, Local Government Code, provided that this section does not apply if the officer is finally convicted under Section 39.02 or 39.03, Penal Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 5, eff. September 1, 2007.

Sec. 34.070. RIGHT OF SUBROGATION. An officer against whom a judgment has been taken under Section 7.001, 7.002, 34.061, 34.063, 34.064, 34.065, 34.066, or 34.067 or under Section 86.023, Local Government Code, or a county that has paid the judgment on behalf of the officer under Section 34.069, has a right of subrogation against the debtor or person against whom the writ was issued.

Added by Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 5, eff. September 1, 2007.

Sec. 34.071. DUTIES OF EXECUTING OFFICER. An officer receiving a writ of execution does not have a duty to:

(1) search for property belonging to the judgment debtor;

(2) determine whether property belongs to a judgment debtor;

(3) determine whether property belonging to the judgment debtor is exempt property that is not subject to levy;

(4) determine the priority of liens asserted against property subject to execution; or

(5) make multiple levies for cash or multiple levies at the same location.

Added by Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 5, eff. September 1, 2007.

Sec. 34.072. TIMING OF EXECUTION AND RETURN. (a) An

officer receiving a writ of execution may return the writ after the first levy, or attempted levy, if the judgment creditor cannot designate any more executable property currently owned by the judgment debtor at the time of the first levy or first attempted levy.

(b) Notwithstanding Rule 637, Texas Rules of Civil Procedure, an attempt to levy on property may begin any time during the life of the writ, provided that the officer shall allow enough time for completing the sale of the property.

Added by Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 5, eff. September 1, 2007.

Sec. 34.073. TRANSFER OF WRIT; NO DUTY TO LEVY OUTSIDE OF COUNTY. (a) An officer receiving a writ may transfer the writ to another officer in another precinct, or to another law enforcement agency authorized to perform executions, within the county of the first officer who received the writ.

(b) An officer does not have a duty to levy on or sell property not within the officer's county, unless it is real property that is partially in the officer's county and partially within a contiguous county.

Added by Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 5, eff. September 1, 2007.

Sec. 34.074. OFFICER'S SURETY. (a) An officer's surety may only be liable for the penal sum of the surety bond minus any amounts already paid out under the bond. In no event may an officer's surety be liable for more than the penal sum of the officer's surety bond.

(b) If the officer and the officer's surety are both defendants in an action brought under this chapter, the surety may deposit in the court's registry the amount unpaid under the surety bond and the court shall determine the proper disposition of this sum or order the return of the deposit to the surety in the court's final judgment.

(c) A surety is not a necessary party to an action brought under this chapter or under Section 7.001. Instead, a prevailing

party under these provisions may bring a separate action against a surety failing to pay the amount remaining under the bond on a final judgment. This action must be brought on or before 180 days after the date all appeals are exhausted in the underlying action.

Added by Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 5, eff. September 1, 2007.

Sec. 34.075. WRONGFUL LEVY. Whenever a distress warrant, writ of execution, sequestration, attachment, or other like writ is levied upon personal property, and the property, or any part of the property, is claimed by any claimant who is not a party to the writ, the only remedy against a sheriff or constable for wrongful levy on the property is by trial of right of property under Part VI, Section 9, Texas Rules of Civil Procedure.

Added by Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 5, eff. September 1, 2007.

Sec. 34.076. EXCLUSIVE REMEDY. This subchapter is the exclusive remedy for violations of an officer's duties with regard to the execution and return of writs without regard to the source of the duty prescribed by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 5, eff. September 1, 2007.