

# Instructor Resource Guide



## **Basic Civil Process**

Course # 3131

Revised: May 2024

# ABSTRACT

The Basic Civil Process course covers the civil jurisdiction of courts, officer's responsibilities, the rules and codes that govern the service, execution and return of civil citations, writs, subpoenas and other documents. The development of the course is in response to requests for assistance with the 20-hour legislative training requirement. It is an alternative to other available training courses already in use. Training providers have the option of presenting this course as written (course 3131) or selecting section(s) of this course and reporting it under generic Civil Process (course 3101). This course is not designed to provide legal advice. The county or district attorney should be consulted for legal advice.

## **Instructor Resource Guide:**

This is an Instructor Resource Guide (IRG), not a lesson plan. The purpose of the IRG is to outline the minimum state requirements of what must be taught for a course to be considered compliant and receive TCOLE credit. It is the responsibility of the training coordinator to ensure the IRG is developed into a complete lesson plan.

- A qualified instructor/subject matter expert shall develop the IRG into a lesson plan that meets the needs of the organization and student.
- Any activity that is **suggested** is just that, an example or suggestion, and is not mandated for inclusion.

## **Lesson Plan:**

Each organization is charged with creating their own lesson plan for how the organization will disseminate the information in the IRG.

- The IRG is designed to assist the instructor/subject matter expert in developing comprehensive lesson plans. The use of current statistics, best practice policing models, and scenario-based training should also be included in the lesson plan development. Instructors are encouraged to add additional activities, videos, scenarios, they deem applicable to their topic area and target population.
- Anything that is **required** must be included in the instructor's lesson plan.

**Note to Training Providers:** It is the responsibility of the training coordinator to ensure this curriculum and its materials are kept up to date. Refer to curriculum and legal resources for changes in subject matter or laws relating to this topic as well as the TCOLE website at [www.tcole.texas.gov](http://www.tcole.texas.gov) for edits due to course review. Training academies must keep a complete training file on all courses reported for TCOLE credit.

**Target Population:** Licensed peace officers and/or officers serving Civil Process, Court Clerks

## **Instructor Prerequisites:**

- Instructor must be a documented subject matter in Civil Process. An instructor must have documented knowledge/training/education and provide an instructor's biography

that documents subject matter expertise. It is the responsibility of the training coordinator to select qualified instructors.

- Instructors should have expertise in civil jurisdictions of courts, Texas code, rules, and laws governing the issuance, service, and return of civil documents.

**Length of Course:** 20 hours, minimum

**Assessment:**

- Training coordinators are responsible for creating assessments and documenting the mastery of all learning objectives in this course using various testing assessment opportunities.
  - Assessment opportunities include oral or written testing, interaction with instructor and trainees, case study and scenario, and other means of testing student’s application of the skills taught as the instructor or department deems appropriate.
- The minimum passing score shall be 70%.

**Reference Material:**

Obtaining the most current copy of Blue360MEDIA – “Civil Process for Texas” is not required but recommended as a resource to help facilitate teaching the course material.

**Facility Requirement:**

- Standard classroom

## Introduction

Civil procedure is the body of law that sets out the rules and standards courts follow when adjudicating civil litigation (as opposed to procedures in criminal law matters). These rules govern how a lawsuit or case may be commenced, what kind of service of process (if any) is required, the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases, the timing and manner of depositions and discovery or disclosure, the conduct of trials, the process for judgment, various available remedies, and how the courts and clerks must function. On average, courts are prepared to deal with all preliminary issues, and process a matter through conclusion --- by trial or settlement --- within two years of initiation of suit, so prompt disposition of civil suits requires an organized effort by the court to move each case through the process efficiently and reduce the volume of complex issues to manageable proportions.

Civil Process according to Blacks' Law Dictionary, 9<sup>th</sup> Edition, is defined as:

1. The proceedings in any action or prosecution (due process of law).
2. A summons or writ, esp. to appear or respond in court (service of process).

Simply, process is an order of the court directing that an action be done. Constitutionally, the sheriff and constable of each county are responsible for carrying out the service of civil process within each county of jurisdiction. While deputies may be assigned to serve civil process other deputies within the department may also serve process and all who serve are subject to liability for improper service.

The service of documents advises citizens of complaints filed against them or of court actions they may be involved in as a witness. This is their fundamental right, guaranteed in the constitution. The person serving the documents has a tremendous responsibility to follow the rules and codes that govern the service and execution of the documents. Failure to do so correctly may delay the court proceeding, or even create liability to the server.

## Learning Objectives

- 1.1 Identify the selected statutory requirements of the Occupations Code.
- 1.2 Identify the TCOLE Rules for obtaining a Civil Proficiency Certificate.
- 2.1 Identify a court's civil and criminal jurisdiction.
- 2.2 Identify the court structure of Texas for civil jurisdiction.
- 3.1 Identify the objective of the Rules of Civil Procedure (TRCP).
- 3.2 Identify the statutes that relate to the fees for Civil Process.
- 3.3 Identify electronic service as alternate service approved by the court in Rule 106 (b).
- 3.4 Define citations, identify TRCP section which apply to civil citations, and identify the case elements of preventing execution of civil process.
- 3.5 Identify the rules which apply to civil subpoenas and the codes that apply to criminal subpoenas.
- 3.6 Identify the different prejudgment writs.
- 4.1 Identify the procedure for enforcement of foreign judgment documents.
- 4.2 Identify the process of writ of execution.
- 4.3 Identify the process of turnover orders.
- 4.4 Identify the process of orders of sale.
- 4.5 Identify the purpose of the documents for recovery of seized property.
- 4.6 Identify the purpose of the writ of assistance for repossession of aircraft.
- 5.1 Identify the process for distress warrants.
- 5.2 Identify the requirements for Writ of Reentry.
- 5.3 Identify the requirements for Writ of Restoration.
- 5.4 Identify the purpose of Texas Rules Civil Procedure 509.

- 5.5 Identify the process of eviction suits.
- 5.6 Identify the requirements of a Writ of Possession.
- 5.7 Define premises in Chapter 94 of the Texas Property Code and identify and discuss the section of the Transportation Code.
- 6.1 Define tax foreclosure, identify tax foreclosure as a lien enforcement action and matters relating to a tax warrant.
- 6.2 Define order of sale (Real Property) and identify sale procedures for the sale of real property (real estate) in a tax foreclosure suit.
- 7.1 Identify the procedures for protective orders.
- 7.2 Identify the process of a Magistrate's Emergency Order.
- 7.3 Identify the process for a Temporary Ex Parte Order.
- 8.1 Identify the procedures of a writ of retrieval.
- 8.2 Identify an officer's duties as they pertain to Texas Property Code 24A.003.

## **Unit 1: Occupational Code and Commission Rules**

### **1.1 Identify the selected statutory requirements of the Occupations Code.**

#### A. Occupations Code:

1. Sec. 1701.253 – School Curriculum
2. Sec. 1701.351 – Continuing Education Required for Peace Officers
3. Sec. 1701.354 – Continuing Education for Deputy Constables

**Instructor Note:** The license holder must meet these requirements to maintain their active status license.

### **1.2 Identify the TCOLE Rules for obtaining a Civil Proficiency Certificate.**

#### A. Civil Proficiency Certificate

1. TCOLE Rule, Sec. 221.1
2. TCOLE Rule, Sec. 221.25

## **Unit 2: Criminal Justice System**

### **2.1 Identify a court's civil and criminal jurisdiction.**

#### A. The civil suit belongs to the plaintiff.

- a. The plaintiff or their attorney are responsible for filing the suit, requesting the issuance of documents, and identifying the name and address of the persons upon whom they want documents delivered. (TRCP 79, 99 and 502.2).

#### B. In the criminal courts the officer investigates an offense, follows up with any necessary case work, and files appropriate charges.

### **2.2 Identify the court structure of Texas for civil jurisdiction.**

#### A. Courts and their jurisdiction

The appellate courts of Texas include the Supreme Court, the Court of Criminal Appeals, and fourteen (14) intermediate courts of appeals.

- a. The Texas Constitution, Article 5, Judicial Department

#### 1. Supreme Court established in the Constitution

- a. Judge must be an attorney.
- b. Jurisdiction: The Supreme Court of Texas has statewide jurisdiction, final appellate jurisdiction in civil and juvenile cases.
- c. In 1941, the Supreme Court was granted the authority by the legislature to create the Texas Rules of Civil Procedure.
- d. The legislation that created the Supreme Court authority to write the Rules of Civil Procedure stipulated the court could not write a rule that contradicted a state law.

2. Court of Criminal Appeals Established in the Constitution
  - a. Judge must be an attorney.
  - b. Jurisdiction: This court has no civil jurisdiction.
  - c. The Court of Criminal Appeals has statewide, final appellate jurisdiction in criminal cases; exclusive jurisdiction over automatic appeals in death penalty cases; and the power to issue writs.
  - d. It is empowered to promulgate rules of evidence and rules for appellate procedure in criminal cases.
3. Courts of Appeals Established Legislatively
  - a. Judge must be an attorney.
  - b. Jurisdiction: These 14 courts have intermediate appellate jurisdiction in civil and criminal cases from trial courts in each respective geographical court of appeals district of the State.
  - c. These courts have limited original writ jurisdiction.
4. District Courts
  - a. Judge must be an attorney and be established legislatively.
  - b. Jurisdiction:
    - i. All felonies
    - ii. Civil \$200.00 and greater
    - iii. Contested elections
    - iv. Appeals from commissioner's courts
    - v. Land Disputes
    - vi. Title to land
    - vii. Slander
    - viii. Probate Appeals
    - ix. Non-Criminal against Sheriffs, attorneys and others
    - x. Divorces
    - xi. Child Custody
    - xii. Child Support
    - xiii. Protective Orders
    - xiv. Juvenile
5. Constitutional County Courts
  - a. Judge is not required to be an attorney.

- b. Created in the constitution.
- c. Jurisdiction: Civil jurisdiction up to \$20,000.00, non-contested probate matters, Class C misdemeanor appeals from Municipal and Justice of the Peace Courts.
- d. The County Judge is not required to be an attorney.
- e. Geographical jurisdiction is countywide.

**Instructor Note:** The commissioner’s court is not a judicial entity; rather it is the governing body of the county. It is presided over by the constitutional county judge and includes four elected commissioners. Although it performs no judicial duties, the commissioner’s court can issue contempt citations.

6. Statutory County Courts

- a. Judge must be an attorney.
- b. Created by the legislature.
- c. Jurisdiction: County Courts at Law.
- d. May have Criminal & Civil jurisdiction:
  - i. Criminal Jurisdiction is Class A & B misdemeanors
  - ii. Civil Jurisdictions up to \$100,000.00.
- e. May be established as appeal courts for class C misdemeanors
- f. Geographical jurisdiction: Countywide

7. County (Probate) Courts

- a. Judge required to be an attorney.
- b. Created by the Legislature.
- c. Jurisdiction:
  - i. A. Contested and non-contested probate matters.
  - ii. Appointment of Guardians.
  - iii. C. Geographic Jurisdiction is county wide.

**Instructor Note:** If there is no Probate Court within a county the Probate jurisdiction reverts back to the District Courts.

8. Justice of the Peace Courts

- a. Judge not required to be attorney.
- b. Created in the Constitution.
- c. Jurisdiction: The Justice of the Peace is also the judge of the Small Claims Court, Debt Claim, Repair and Remedy and Evictions in their precinct.
  - i. Justice Court civil jurisdiction is up to \$10,000.00 9-1-2020 changes to \$20,000.00, Class C Misdemeanors.

- d. They may not try title to land disputes, only who gets possession in Eviction suits.
- e. Justices of The Peace may also perform marriages.
- f. Geographic Jurisdiction: Disputes within their precinct or involve residence of their precinct

**Instructor Note:** A court's jurisdiction over a matter is questioned by either party (plaintiff or defendant), but not the officer. The officer's duties are defined within the codes, rules, and laws. A Justice of the Peace in many areas of the state may perform death inquests.

#### 9. Municipal Courts

- a. Judge not required to be attorney.
- b. Created by legislation - Authority was granted to municipalities to create municipal courts.
- c. Jurisdiction:
  - i. Class C misdemeanors
  - ii. Health and Safety Issues (City Ordinances)
  - iii. Animal Cruelty
  - iv. Truancy (District Juvenile Court must give permission to hear truancy cases)
- d. Municipal judges may perform marriages
- e. Geographic jurisdiction: Within the municipal boundaries

#### B. Court structure of Texas (See chart below)



### Unit 3: Civil Process

#### 3.1 Identify the objective of the Rules of Civil Procedure (TRCP).

- A. Rules of Civil Procedure:
  - a. Rule 1 – Objective of Rules
  - b. Rule 2 – Scope of Rules
- B. Legislative Restrictions
  - a. Rules of Civil Procedure, Rule 2 (Scope of Rules) reflects the legislative restriction included in the 1941 statute that made the Rules of Civil Procedure the governing authority when no statute exist.

#### 3.2 Identify the statutes that relate to the fees for Civil Process.

- A. Code of Criminal Procedure Sec. 2.16 - Officer to Execute Process
- B. Rules of Civil Procedure:
  - a. Rule(s) 125 – 127
- C. Civil Practice & Remedies Code Sec. 17.025 – Mail Cost In Addition To Fee
- D. Local Government Code:
  - a. Sec. 86.021(d) – All Constable Service Fees Go To County
  - b. Sec. 118.801 – Overcharging of Fees; Penalty
  - c. Sec. 154.001 – Sec. 154.004
  - d. Sec. 154.009 – Effect of Failure to Collect Fee or Commission
- E. Family Code 231.202 - Attorney General’s Office – Child Support
- F. Rules of Evidence 901 (2) - Self – Authentication

**Instructor Note:** Service Fees for Tax Suits – The tax unit does not have to pay service fees. However, the final judgment in the suit can assess these fees against the defendant. The return should have the standard service fee entered of the document.

#### 3.3 Identify electronic service as alternate service approved by the court in Rule 106 (b).

- A. Rules of Civil Procedure - Rule 106(b):

(b) Upon motion supported by a statement—sworn to before a notary or made under penalty of perjury—listing any location where the defendant can probably be found and stating specifically the facts showing that service has been attempted under (a)(1) or (a)(2) at the location named in the statement but has not been successful, the court may authorize service:

- (1) by leaving a copy of the citation and of the petition with anyone older than sixteen at the location specified in the statement; or

(2) in any other manner, including electronically by social media, email, or other technology, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suit.

### **Notes and Comments**

Comment to 1988 change: Conforms to amendment to Rule 103.

Comment to 2020 Change: Rule 106 is revised in response to section 17.033 of the Civil Practice and Remedies Code, which calls for rules to provide for substituted service of citation by social media. Amended Rule 106(b)(2) clarifies that a court may, in proper circumstances, permit service of citation electronically by social media, email, or other technology. In determining whether to permit electronic service of process, a court should consider whether the technology actually belongs to the defendant and whether the defendant regularly uses or recently used the technology. Other clarifying and stylistic changes have been made.

### **3.4 Define citations, identify TRCP section which apply to civil citations, and identify the case elements of preventing execution of civil process.**

- A. Citation is a court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so (Black's Law Dictionary, 2009 P277).
  - a. The Black's Law definition indicates a citation is a writ. However, in the Texas Rules of Civil Procedure (Rule 15) it states Texas courts issue *Writs* and *Process*. In rule 99 and 501 the document is better defined as notification of litigation being filed against the defendant and what action is required on the defendant's part. In district and county courts it will be a written response filed with the court by 10:00 AM the first Monday after expiration of 20 calendar days counting from the next day after the service date (TRCP 4, 99). For Justice of The Peace Courts the response will be written,
    - i. "You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part of the Texas

Rules of Civil Procedure, which is available online and also at the court listed on this citation."

- b. Both rule 106 and 501.1 require a copy of the petition be delivered with the citation.
  - i. Regular civil citations do not expire. However, tax citations expire in 90 days from the date of issuance. TRCP 117a,6

B. Rules of Civil Procedure – Citations:

- a. Rule 99:
  - i. (a)-501.1 - Issuance of Citation
  - ii. (b)-501.1(a) - Form of Citation
- b. Rule 103-501.2(a) - Who may serve
- c. Rule 6 – 501.2(d) - When service may not be made
- d. Rule 105-501.2(e)(1)(2) - Duty of Officer or Person Receiving
- e. Rule 106-501.2(b) - Methods of Service
- f. Rule 109 - Citation by Publication
  - i. 109(a) - Other Substituted Service
- g. Rule 116 - Service By Publication

**Instructor Note:** Stress that service is not complete until the document is returned to the court. District and county court citation returns must be on file ten (10) days before the court can proceed with the case. Justice and small claims citation returns must be on file three (3) days before the court can proceed with the case. Rule 107 and 501.2(e) permit the officer to attach a return to the citation. There is no uniform citation used throughout the state. They should all meet the requirements set out in Rule 99 and 501.1. The citations may not give the officer sufficient room to write in dates, times and the other information. The officer is required to complete the return. These returns are generally designed by persons who have never served a document.

C. Case elements of Preventing Execution of Civil Process

- a. Penal Code Sec. 38.16 - Preventing execution of civil process
- b. Penal Code Sec. 38.15 - Interference with Public Duties

**Instructor Note:** Penal Code Sec. 38.15 can apply when any of the peace officers' duties are interfered with by any individual. The instructor should emphasize officer safety when serving citations.

### 3.5 Identify the rules which apply to civil subpoenas and the codes that apply to criminal subpoenas.

**Instructor Note:** It is highly encouraged to stress how civil subpoenas are issued and served under civil rules. There is no Subpoena Duces Tecum in the civil rules. When the current rule 176 was enacted Duces Tecum was removed. The current rule allows for subpoena of people, records and other things to be brought to court with a subpoena.

#### A. Definition and rules for Civil Subpoenas

- a. Subpoena - To serve with a subpoena to appear before a court or other tribunal. (Black's Law Dictionary, 2009 P1563).
- b. Rules of Civil Procedure:
  - i. Rule(s) 176.1 – 176.5 & 176.8
  - ii. Rule 500.8 (a) – (d) & (g)
- c. Civil Practice and Remedies Code:
  - i. Sec. 22.001 – Witness Fee
  - ii. Sec. 22.004 – Fee for Production of Certification of Documents
  - iii. Sec. 22.011 – Privilege from Arrest

#### B. Criminal Subpoenas

**Instructor Note:** It is highly encouraged to stress that criminal subpoenas are served under different rules than civil subpoenas and there are different requirements.

- a. Code of Criminal Procedure:
  - i. Sec. 24.01(b)(1)(2) – Issuance of subpoenas-Requirements for Server
  - ii. Sec. 24.011 – Subpoena for person younger than 18
  - iii. Sec. 24.02 – Subpoena duces tecum
  - iv. Sec. 24.04 – Service and return
  - v. Sec. 2.16 – Neglect to execute

**Instructor Note:** The legislature may establish agencies or Commissions that are granted subpoena power. These Commissions or agencies will establish their own rules that govern the issuance and return of their subpoenas. The officer should request a copy of their subpoena procedures when he receives a subpoena from one of these organizations for proper service and return.

### 3.6 Identify the different prejudgment writs.

#### A. Writ of Attachment.

- a. Pre-Judgment Attachment – An attachment ordered issued before final judgment.
- b. Provisional Attachment – A prejudgment attachment in which the debtor’s property is seized so that if the creditor ultimately prevails, the creditor will be assured of recovering on the judgment through the sale of the seized property. (Black’s Law Dictionary 2009 P145)
- c. Courts may issue writs of attachment for property.
  - i. Civil Practice and Remedies Code Sec. 61.021 - The judge or clerk of a district, county or justice of the peace court may issue this writ.
  - ii. Civil Practice and Remedies Code Sec. 61.023 - Before the writ may issue the plaintiff must post a bond set by the court.
  - iii. The attachment of property is an **Ancillary Proceedings** and only property subject to Execution maybe seized. After final judgment a writ of execution would be issued to seize the property.

**Instructor Note:** Rules of Civil Procedure, Rule 621 – Writs expire in 30, 60 or 90 days does not apply to prejudgment writs. The rule specifies it only applies to judgment enforcement document and this is a prejudgment writ.

- The Service member’s Relief Act provides for a stay of civil attachments. If the officer is made aware of this relief possibly being available to the defendant, the officer should advise the court.
- The instructor should stress the return of the writ is due fifteen (15) days from the issue date on the first Monday thereafter, by 10:00am. Rules of Civil Procedure, Rule 606
  - Civil Practice and Remedies Code:
    - Sec. 61.021 - Who May Issue
    - Sec. 61.023 - Bond
  - Rules of Civil Procedure:
    - Rule 592a - Bond for Attachments
    - Rule 592 - Application for Writ of Attachment & Order
    - Rule 592b- Form of Attachment Bond
    - Rule(s) 593 – 595
  - 50 U.S.C. APP. 524 – 525 - Service member’s civil Relief Act (Stay)
- d. Duties related to the seizure of personal and real property
  - i. The officer’s first duty is to levy on a sufficient amount of the defendant’s property found within the officer’s county to satisfy the amount specified in the writ. The property subject to levy is the same property subject to

Execution. Exempt property is not subject to levy unless it is specifically named in the writ. When it is named in the writ the court has determined it is not exempt.

- ii. Personal property must be taken into the officer's possession. He must keep the property safe and protect the value of the property. Perishable property requires immediate notification of the court. The court may issue sale orders to preserve the value of the property and prescribe the method of sale.
- iii. Real property (land and the building there on) is levied on by writing the levy on the writ and delivering the copy of the writ to the County Clerk copy is placed in the deed records (Property Code Sec. 12.012). The. This action establishes the court's control over the property. The officer completes the return and sends it back to the issuing court.
- iv. Disobedience to the court order can result in the plaintiffs filing of a show cause order to have the defendant held in contempt of court.
- v. Rules of Civil Procedure:
  1. Rule(s) 597 – 607
    - a. Rule 598(a)-21a – Service of Writ on Defendant
- vi. Texas Civil Practice and Remedies Code:
  1. Sec. 61.041 – Subject Property
  2. Sec. 61.042 – Attachment of Personally
  3. Sec. 61.043 – Attachment of Realty
  4. Sec. 61.061 – Attachment Lien
  5. Sec. 61.062 – Judgment and Foreclosure
  6. Sec. 61.063 – Judgment on Replevied Property
- e. "Exempt Property" as described in the Texas Property Code.

**Instructor Note:** Discuss the following:

- The definitions of rural and urban homesteads.
- How the homestead exemption is filed.
- For taxing purpose only a Manufactured Home Tax Homestead. (Tex. Code Sec11.432)
- Property that is exempt and not to be calculated in the aggregate value to determine seizure of property.
- The personal property list is section 42.002 of the Texas Property Code and the aggregate value of these items as they relate to exempt amount.

- The additional exemption for retirement, health care plans and college saving plans.
- When exempt property maybe designated.
- How child support liens affect exempt property rights. (Dryden v. Dryden, 97 S.W.3d 863 2003 Tex. App.)
  - The payment of child support is a natural and legal duty, not a debt. The enforcement of such arrearages does not violate the Texas Constitution.
  - i. Property Code:
    1. Sec. 41.001 - Interests in Land Exempt from Seizure
    2. Sec. 41.002 - Definition of Homestead
    3. Sec. 41.003 - Temporary Renting of Homestead
    4. Sec. 41.005 - Voluntary Designation of Homestead
      - a. Sec. 41.005(e) - Tax Homestead Exemption
    5. Sec. 41.021 - Notice to Designate
    6. Sec. 42.001 - Personal Property Exemptions
    7. Sec. 42.002 - Exempt Personal Property
    8. Sec. 42.0021 - Exemption Retirement & Health Saving
    9. Sec. 42.0022 - Exemption College Savings Plans
    10. Sec. 42.003 - Designation of Exempt Property
    11. Sec. 42.005 - Child Support Lien

B. Writ of Sequestration (Prejudgment).

- a. The process by which property is removed from the possessor pending the outcome of a dispute in which two or more parties contend for it. (Black's Law Dictionary, 2009 P1488)
- b. General provisions of sequestration.
  - i. The Sequestration will take property and place it under the control of the court in order to protect the value. The first duty of the officer after normal endorsements on the writ is to seize the property.
  - ii. Service is made on the defendant under rule 21a. This rule establishes when the document is considered served. These times, set out in the rule, have a direct effect on the defendant's sole replevy right for the first 10 days after the date of service, not the date of seizure. The Plaintiff's posting bond may act as his replevy bond if the court so orders in the writ.

- iii. Once demand has been made for the property under the provisions of 21a if the defendant does not turn the property over to the officer the writ should be return to the court noting the refusal. This allows the plaintiff to proceed with show cause for contempt of court.

**Instructor Note:** TRCP 621 – Writs expire in 30, 60 or 90 days does not apply to prejudgment writs. The rule specifies it only applies to judgment enforcement document and this is a prejudgment writ, no judgment has been rendered.

- c. Replevy Bond: The bond that protects the attaching officer and ensures the property’s safekeeping until the court decides whether it should be returned to the defendant. (Black’s Law Dictionary 2009 P202).
- d. Provisions for the Replevy Bond, release or sale of sequestered property:
  - i. Rules of Civil Procedure, Rule 698 allows the plaintiff’s posting bond to act as his replevy as long as the bond meets the requirements set out in TRCP 708. The order should reflect if the court allows the posting bond to act as the plaintiff’s replevy bond.
  - ii. The court should prepare a written order to the officer to release the property. If the court orders the property sold, it should be an Order of Sale directing the officer to sell the property. Property is sold according to the Rules of Civil Procedure for the sale of property.
  - iii. Civil Practice and Remedies Code:
    - 1. Sec. 62.002: Pending Suit Required
    - 2. Sec. 62.021 – Who May Issue
    - 3. Sec. 62.023 – Required Statement of Rights
    - 4. Sec. 62.061 – Officer’s Liability and Duty of Care
    - 5. Sec. 62.062 – Compensation of Officer
    - 6. Sec. 62.063 – Indemnification of Officer for Money Spent
  - iv. Rules of Civil Procedure:
    - 1. Rule 696 – Application for Writ
    - 2. Rule(s) 698 – 706
    - 3. Rules(s) 708 – 716

**Instructor Note:** The instructor should include examples of Writs of Sequestrations and returns. Also, officer safety should be stressed. There are times when repossession people will no longer attempt to take the property because of a threat or actual violence has occurred.

C. Writ of Garnishment (Pre or Post Judgment).

- a. A judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party.
- b. A Plaintiff initiates a garnishment action as a means of either prejudgment seizure or post judgment collection. (Black's Law Dictionary, 2009 P750).
- c. General provisions of garnishment:
  - i. Garnishee may not deliver asset to the defendant.
  - ii. Asset is under the courts control.

**Instructor Note:** In 2007, the legislature added 17.028 to the Civil Practices and Remedies Code. Service is now allowed on the registered agent or the president or a branch manager at any office in the state.

**Instructor Note:** Delays in service of these documents may create liability for the agency as well as the officer. The definition of Garnishee should be stressed versus the defendant in the case. If the officer has a garnishment for the Garnishee and a Garnishment for the defendant the TRCP rule 663a says to serve the defendant as soon as is practicable following service on the Garnishee.

- d. Civil Practice and Remedies Code:
  - i. Sec. 63.001 – Sec. 63.004
  - ii. Sec. 17.028(b),(1),(2)
  - iii. Sec. 17.028(c),(1),(2)
- e. Rules of Civil Procedure:
  - i. Rule(s) 657 – 659
  - ii. Rule(s) 661 – 664
    - 1. Rule 663(a)-21a

D. Writ of Habeas Corpus (Pre or Post judgment writ).

- a. Habeas Corpus is a writ employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal. (Black's Law Dictionary, 2009 P778).
- b. Courts with jurisdiction to issue Habeas Corpus.
  - i. Code of Criminal Procedure Sec. 11.05 – By Whom Writ May Be Issued
  - ii. County
  - iii. District
  - iv. Appeals Court
- c. Purpose of the Habeas Corpus Writ.

- i. Civil, to order the person alleged to be restraining a person, to produce that person at a time or place named.
    - ii. Criminal, to order the person holding a person in custody to produce and show cause, why the person is being held.
  - d. Statutes which grant the authority to issue Writ of Habeas Corpus:
    - i. Family Code Sec. 157.371 – Jurisdiction
    - ii. Code of Criminal Procedure:
      1. Sec. 11.01 – What Writ Is
      2. Sec. 11.02 – To Whom Directed
      3. Sec. 11.05 – By Whom Writ may be Granted
      4. Sec. 11.23 – Scope of Writ
      5. Sec. 11.26 – Sec. 11.28
      6. Sec. 11.34 – Disobeying Writ
      7. Sec. 11.36 – Applicant may be Brought Before Court
      8. Sec. 11.60 – Refusing to Execute Writ

E. Capias (for person)

- a. Capias is any of various types of writs that require an officer to take a named defendant into custody. (Black’s Law Dictionary, 2009 P236)
- b. Capias Pro Fine – A writ for the arrest of a person who has not paid an imposed fine. (Black’s Law Dictionary, 2009 P236)

F. Attachment (for person)

- a. Provisional Attachment (2) is the arrest of a person who either is in contempt of court or is to be held as security for the payment of a judgment. (Black’s Law Dictionary 2009 P145)

**Instructor Note:** Civil attachments of persons are permitted in most codes for any number of reasons. The level of force used to execute an attachment of a person should be that same used the execution of a class c misdemeanor.

G. Who may issue?

- a. Any court having subpoena power or contempt jurisdiction may issue these documents. It is issued by a clerk of a court under seal, or by any magistrate or by the foreman of a grand jury, in any criminal action or proceeding authorized by law commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury. (CCP 24.11)

**Instructor Note:** It may or may not authorize the person to be placed in the county jail.

H. Statutes which gives the authority to issue.

**Instructor Note:** A *capias* or warrant for enforcement of child support shall be entered into TCIC only, cannot be entered NCIC. The case originates in civil courts, but it has criminal responsibilities attached to the final judgment.

- FC sec. 152, Uniform Child Custody Jurisdiction and Enforcement Act. 152.311 – Warrant to Take Physical Custody of a Child.
- a. Code of Criminal Procedure:
  - i. Sec. 24.11 – Requisites of an Attachment
  - ii. Sec. 24.12 – When Attachment May Issue
  - iii. Sec. 24.14 – Attachment for Resident Witness
  - iv. Sec. 24.15 – Secure Attendance Before Grand Jury
- b. Family Code:
  - i. Sec. 52.0151 – Bench Warrant; Attachment in Custody
  - ii. Sec. 157.102 – *Capias* Duty of Law Enforcement Officials
  - iii. Sec. 157.114 – Failure to Appear
- I. Temporary restraining orders and temporary injunctions (Prejudgment Writ).
  - a. Temporary Restraining is a court order preserving the status quo until the plaintiff's application for a preliminary or permanent injunction can be heard (Black's Law Dictionary, 2009 P1603).
  - b. Injunction is a court order commanding or preventing an action (Black's Law Dictionary, 2009 P855).
  - c. Preliminary Injunction is a temporary injunction issued before or during a trial to prevent an irreparable injury from occurring before the court has a chance to decide the case (Black's Law Dictionary, 2009 P855).
- J. General provisions of temporary restraining orders and injunctions.

**Instructor Note:** Temporary restraining orders must have a hearing date set no later than fourteen (14) days after the filing. Extension of the TROs may be granted. Temporary Injunctions require a written response twenty (20) days from the date of service the first Monday thereafter.

- a. Rules and codes that govern these documents.
  - i. Civil Practice and Remedies Code:
    1. Sec. 65.045 – Conflict with Texas Rules of Civil Procedure
    2. Sec. 65.011 – Grounds Generally
    3. Sec. 65.021 – Jurisdiction of Proceeding
    4. Sec. 65.023 – Place for Trial

- ii. Rules of Civil Procedure:
  - 1. Rule(s) 680 – 690
  - 2. Rule 692 – Disobedience
- K. Service requirements for citations and other documents under the Estates Code.
  - a. Citation, Notices & Writs shall be served by certified mail by the court clerk. If personal service is requested, that service will be done by the sheriff or constable. The sheriff or constable shall deliver the citation or notice to the person named a true copy of such citation or notice at least (10) days before the return day (court date) thereof, exclusive of the date of service. (Estates Code Sec. 51.052)
  - b. Documents issued by Estate Courts.
    - i. Estate courts may issue any document that any other court can issue. This includes eviction writs. The court may also prescribe the method of service and return. Officer should read the document to determine the courts service and return instruction. It may or may not follow the same procedure as set out in the Rules of Civil Procedure. (Estates. Code 33(d)).
  - c. Estates Executions are returnable in 60 days.
    - i. Estates Code Sec. 53.105

#### **UNIT 4: Post Judgement Writs**

##### **4.1 Identify the procedure for enforcement of foreign judgment documents.**

- A. Civil Practice and Remedies Code Sec. 35.001 – Definition
- B. Civil Practice and Remedies Code Sec. 35.003 – Filing and Status of Foreign Judgements
- C. Civil Practice and Remedies Code Sec. 35.007 – Fees

##### **4.2 Identify the process of writ of execution.**

- A. Writ of Execution
  - a. A court order directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor’s property. (Black’s Law Dictionary, 2009 P650)
- B. When and what courts may issue Executions.
  - a. The judgment is rendered by a District, County or Justice of the Peace Court. Execution is issued at the request of the plaintiff when the conditions of the judgment have not been complied with.
  - b. Writ may not issue until 30 days from the time a final judgment is signed. Plaintiff may file an affidavit within the 30 days stating the defendant is about to remove, transfer or secrete the property for the purpose of

defrauding his creditors. If the court agrees the writ may issue at that time.  
Rules of Civil Procedure; Rule 628

- c. Justice Courts may stay an execution. Within 10 days of judgment the court may grant a motion to stay the judgment. No writ will issue for 3 months when all conditions are met and the motion is granted. Rules of Civil Procedure; Rule 635.
- d. Rules of Civil Procedure:
  - i. Rule 505.2 (Justice Courts) – Enforcement of Judgement
  - ii. Rule 507.4 (Justice Courts) – Issuance of Writs
  - iii. Rule 621 – Enforcement of Judgement
  - iv. Rule 622 – Execution
  - v. Rule 627 – Time for Issuance
  - vi. Rule 628 – Execution Within Thirty Days
  - vii. Rule 635 – Stay of Execution in Justice Court

C. Requisites of an execution

- a. A correct copy of the bill of cost shall be attached to the writ. Many of the current Writ of Execution forms have a “Bill of Cost” printed on the writ itself. It is not required to be certified. The writ must be returned within a specific time, i.e. 30, 60 or 90 days from the date of issuance.

**Instructor Note:** Rules 630, 631, 632 and 633 will determine the writ’s commandments.

- b. Rules of Civil Procedure:
  - i. Rule(s) 629 – 633

D. Sections of the TRCP and CPRC that define the officer duties in Writs of Executions.

- a. Rules of Civil Procedure:
  - i. Rule(s) 636 – 641
  - ii. Rule 643 – Levy on Goods Pledged or Mortgaged
- b. Civil Practice and Remedies Code:
  - i. Sec. 34.071 – Sec. 34.073
  - ii. Sec. 7.003(b) – Liability Regarding Execution of Writs
  - iii. Sec. 34.048 – Purchase by Officer Void
  - iv. Sec. 34.002 – Effect of Plaintiff’s Death
  - v. Sec. 34.003 – Effect of Defendant’s Death

E. Liability issues when executing Writs of Execution

- a. Civil Practice and Remedies Code:
    - i. Sec. 7.001 – Liability for Refusal or Neglect in Performance of Official Duties
    - ii. Sec. 7.003 – Liability Regarding Execution of Writs
    - iii. Sec. 34.061 – Duty Toward Seized Property: Liability
    - iv. Sec. 34.063 – Sec. 34.067
    - v. Sec. 34.075 – Wrongful Levy
  - F. Sale procedures for the sale of Personal Property
    - a. Personal Property (anything that is not land)
    - b. Bill of Sale – An instrument for conveying title to personal property, absolutely or by way of security. (Black’s Law 2009 P189)
    - c. Personal property must be displayed at the time and location of the sale; therefore, most sales are conducted where personal property is stored.
    - d. Sale notice should indicate the approximate time the sale will take place. This time must be between the hours of 10:00 am and 4 pm.
    - e. Rules of Civil Procedure:
      - i. Rule 650 – 653
  - G. Procedure for the sale of Real Property.
    - a. Real Property define is land and anything growing on it, attached to, or erected on it, excluding anything that may be severed without injury to the land. (Black’s Law Dictionary 2009 P1337)
    - b. Venditioni Exponas define is a Writ of Execution requiring a sale of particular goods to be made. (Black’s Law Dictionary 2009 P1694) In some jurisdictions (Texas is one), a Venditioni Exponas is issued to require a sale of property seized under an earlier writ, after the property has been condemned or passed upon by inquisition. The Supreme Court ruled this was a valid writ to sell seized property after the original writ has expired. It does not allow for additional seizures, just the sale of property already in the officer’s possession.
- Instructor Note:** The sale of real property takes place on the first Tuesday of the month, even if the first Tuesday is a holiday. TRCP only address holidays in Rule 4 for the calculations of time.
- c. Rules of Civil Procedure:
    - i. Rule 646a – Sale of Real Property
    - ii. Rule 647 – Notice of Sale of Real Property (Venditioni Exponas)
    - iii. Rule 648 – “Courthouse Door” Defined

- iv. Rule 653 – Resale of Property
- d. Civil Practice and Remedies Code:
  - i. Sec. 34.041 – Sale at Place Other Than Courthouse door
  - ii. Sec. 34.042 – Sale of City Lots
  - iii. Sec. 34.043 – Sale of Rural Property
  - iv. Sec. 34.0445 – Person Eligible to Purchase Real Property
  - v. Sec. 34.045 – Conveyance of Title After Sale

**Instructor Note:** Discuss the possibility of other existing writs for the defendant.

H. Sections of the Texas Property Code that pertain to exemptions.

**Instructor Note:** Exempt property was addressed in “Pre-Judgment Writs-Attachment. If prejudgment writs have not been addressed before Execution, then exempt property should be taught in this section.

- a. Property Code:
  - i. Sec. 41.001 – Sec. 41.003
  - ii. Sec. 41.005 – Voluntary Designation of Homestead
    - 1. Sec. 41.005(e) – Tax Homestead Exemption
  - iii. Sec. 41.021 – Notice to Designate
  - iv. Sec. 42.001 – Personal Property Exemptions
  - v. Sec. 42.002 – Personal Property
  - vi. Sec. 42.0021 – Additional Exemption for Certain Savings Plans
  - vii. Sec. 42.0022 – Exemption College Saving Plan
  - viii. Sec. 42.003 – Designation of Exempt Property
  - ix. Sec. 42.005 – Child Support Lien

I. Requirements of and calculations for judgments according to the Finance Code.

**Instructor Note:** Section 304 of the Finance Code applies to money judgments of a court in this state. Banking codes do not. It is important that the instructor be very knowledgeable in the application of this code.

- a. Finance Code:
  - i. Sec. 304.001 – Sec. 304.006
  - ii. Sec. 304.104 – Accrual of Prejudgment Interest (Prejudgment Interest Rate for Condemnation Case)

**Instructor Note:** Instructor may provide a worksheet and have the student calculate a judgment. TRCP 630 requires interest rate on the writ.

## J. Non eviction Writs of Possession/Execution

**Instructor Note:** TRCP 632 authorizes “Execution for Delivery of Certain Property”. TRCP 308 carries it step further. It allows for a special writ to issue for return of personal property when that property has special value to the plaintiff. This writ is also known as a Writ of Possession. TRCP 310 authorizes a “Writ of Possession” for an order foreclosing a lien. The purchaser is placed in possession of the property.

- a. Rules of Civil Procedure:
  - i. Rule 632 – Execution for Delivery of Certain Property
  - ii. Rule 308 – Court Shall Enforce Its Decrees
  - iii. Rule 310 – Writ of Possession
  - iv. Rule 633 – Execution for Possession or Value of Personal Property
- b. Property Code:
  - i. Sec. 21.001 – Eminent Domain-Concurrent Jurisdiction
  - ii. Sec. 21.002 – Eminent Domain-Transfer of Cases

### 4.3 Identify the process of turnover orders.

#### A. Turnover Order

- a. An order by which the court commands a judgment debtor to surrender certain property to a judgment creditor, or to the sheriff or constable on the creditor’s behalf. (Black’s Law Dictionary 2009 P1207).

#### B. Officer’s duty in the execution of a turnover order

**Instructor Note:** Texas law prohibits the order from directing the defendant to turnover property directly to the plaintiff. It may direct the sheriff or constable to take possession of a business and turn that business over to a receiver. It should also be noted that CPRC 31.005 does not permit the court to order wages turnover. The title is misleading.

- a. Civil Practice and Remedies Code:
  - i. Sec. 31.002 – Collection of Judgment Through Court Proceeding
  - ii. Sec. 31.0025 – Authority of Court to Order Turnover of Wages
  - iii. Sec. 31.010 – Turnover by Financial Institution

#### C. Officer’s duty when property is not turned over:

- a. The order directs the defendant to turnover what the writ directs. The order is to aid in the execution process.
- b. Civil Practice and Remedies Code Sec. 31.002 – Collection of Judgment Through Court Proceeding

### 4.4 Identify the process of orders of sale.

#### A. Order of Sale

- a. Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of plaintiff's lien on the property subject thereto, and, except in judgments against executors, administrators and guardians, that an order of shall issue to any sheriff or constable within the State of Texas, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to take the money or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary execution. (TRCP 309).
- B. Rules of Civil Procedure:
  - a. Rule 621 – Enforcement of Judgement
  - b. Rule 309 – In Foreclosure Proceedings
  - c. Rule 6 – Suits Commenced on Sunday
  - d. Rule 647 – Notice of Sale of Real Estate
  - e. Rule 637 – Levy of Execution
  - f. Rule 639 – Levy
  - g. Rule 21a – Methods of Service
  - h. Rule 654 – Return of Execution
- C. Tax Code Sec. 33.53(c)(1) – Order of Sale; Payment Before Sale
- D. Civil Practice and Remedies Code:
  - a. Sec. 34.041 – Sec. 34.045

**4.5 Identify the purpose of the documents for recovery of seized property.**

- A. Timeline for Judgment recovery
  - a. Rules of Civil Procedure:
    - i. Rule 396a – Notice of Judgement
    - ii. Rule 633a – Garnishment
    - iii. Rule 679b – Writ of Garnishment, Execution or Other Post Judgement Writ

**4.6 Identify the purpose of the writ of assistance for repossession of aircraft.**

- A. Property Code:
  - a. Sec. 30.01 – Sec. 30.03

**Unit Five: Landlord Tenant**

**5.1 Identify the process for distress warrants.**

- A. Distress Warrants:

- a. A landlord's warrant, distain—to force by the seizure and detention of personal property, to perform an obligation (such as paying overdue rent). (Black's Law Dictionary 2009 P1723-P542).
- B. Texas Property Code defining issuing requirements and jurisdiction.

**Instructor Note:** The warrant is a lien enforcement document. Eviction writs may not be used to enforce this lien. It may only be issued for agricultural and commercial property. It is not available for residential tenants.

- a. Property Code:
  - i. Sec. 54.001 – Lien (Agricultural)
  - ii. Sec. 54.004 – Duration of Lien
  - iii. Sec. 54.006 – Distress Warrant
  - iv. Sec. 54.021 – Lien (Commercial)
  - v. Sec. 54.024 – Duration of Lien
  - vi. Sec. 54.025 – Distress Warrant
- C. Texas Rules of Civil Procedure that applies to Distress Warrants
  - a. Rules of Civil Procedure:
    - i. Rule(s) 610 – 615
    - ii. Rule 617 – Procedure for Sale
    - iii. Rule 619 – Citation for Defendant

## 5.2 Identify the requirements for Writ of Reentry.

- A. Define Reentry.
  - a. The act or an instance of retaking possession of land by someone who formerly held the land and who reserved the right to retake it when the new hold let it go. (Black's Law Dictionary 2009 P2392)
- B. Requirements for issuance of a Writ of Reentry.
  - a. Property Code:
    - i. Sec. 92.009 – Residential Tenant's Right of Reentry After Unlawful Lockout
      - 1. Sec. 92.009(l) – Writ of Reentry Fee (Residential)
    - ii. Sec. 92.0081(b) – Residential Lockout (defined)
    - iii. Sec. 93.003 – Commercial Tenant's Right of Reentry After Unlawful Lockout
    - iv. Sec. 93.002 – Interruption of Utilities, Removal of Property, and Exclusion of Commercial Tenant
      - 1. Sec. 93.002(c) – Commercial Lockout (defined)
      - 2. Sec. 93.002(l) – Writ of Reentry Fee (Commercial)
- C. Officer's duties in the execution of the Writ of Reentry

- a. Property Code:
  - i. Sec. 92.009(i) – Residential Reentry (officer)
  - ii. Sec. 93.003(i) – Commercial Reentry (officer)

**Instructor Note:** Instructor should stress reasonable force in execution of this writ.

### **5.3 Identify the requirements for Writ of Restoration.**

- A. Define Write of Restoration
  - a. A writ to a landlord directing him to restore utility service that has been unlawfully interrupted. Texas Property Code 92.0091
- B. Service requirements for the Writ of Restoration.
  - a. Property Code:
    - i. Sec. 92.0091 – Residential Tenant’s Right of Restoration After Unlawful Utility Disconnection
      - 1. Sec. 92.0091(k) – Service Fee
- C. Penalty for failing to comply with the Writ.
  - a. Property Code Sec. 92.0091(j) – Residential Tenant’s Right of Restoration After Unlawful Utility Disconnection

### **5.4 Identify the purpose of Texas Rules Civil Procedure 509.**

- A. Define the purpose of TRCP 509
  - a. A suit to enforce the landlord’s duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. (Rules of Civil Procedure; Rule 509.1)
- B. Identify service and return requirements for the citations issued under TRCP 509
  - a. Rules of Civil Procedure:
    - i. Rule 509.3 – Citation: Issuance; Appearance Date; Answer
    - ii. Rule 509.4(a) – Service and Return of Citation; Alternative Service of Citation
    - iii. Rule 509.4(b) – Service and Return of Citation; Alternative Service of Citation

### **5.5 Identify the process of eviction suits.**

- A. Define Eviction Suits
  - a. The act or process of legally dispossessing a person of land or rental property. (Black’s Law Dictionary 2009 P635)
- B. Sections of the Texas Property Code that govern the landlord notice to vacate.

- a. Property Code Sec. 24.005 – Notice to Vacate Prior to Filing Eviction
- b. Property Code Sec. 24.006 – Attorney’s Fees and Cost of Suit
- C. Sections of the Texas Property Code that define Forcible Entry and Detainer, and Forcible Detainer as grounds for an eviction suit.
  - a. Property Code Sec. 24.001 – Forcible Entry and Detainer
  - b. Property Code Sec. 24.002 – Forcible Detainer
- D. Original jurisdiction in eviction suits
  - a. Property Code Sec. 24.004 – Jurisdiction; Dismissal
  - b. Rules of Civil Procedure; Rule 510.3(b) – Petition
- E. Rule that allows the eviction suit to be joined with a suit for back rent.
  - a. Rules of Civil Procedure:
    - i. Rule 510.3 (d) – May Sue for Rent
    - ii. Rule 510.3 (e) – Only Issue (Possession-eviction suit)

**Instructor Note:** These are two suits being heard at the same time. The judgment for back rent is a money judgment. The defendant has ten (10) days to appeal a money judgment. In the eviction suit the defendant has five (5) days to appeal the possession ruling.

- F. Required language on the eviction citation.

**Instructor Note:** In addition to the standard language the eviction citation requires a hearing date no less than six (6) days and no more than ten (10) days from the date of service. Effective 9-1-2007, it also requires specific language in English and Spanish about the time frame for eviction and the right to an attorney. This language can be found in Texas Property Code 24.0051.

- a. Rules of Civil Procedure:
  - i. Rule 510.4 (a) – Citation
  - ii. Rule – Complainant May Have Possession
- b. Property Code Sec. 24.0051 – Procedures Applicable in Suit to Evict and Recover Unpaid Rent
- G. Service and return duties for Eviction Citations specified in Texas Rules of Civil Procedure.
  - a. Rules of Civil Procedure:
    - i. Rule – Complainant May Have Possession
    - ii. Rule 510.4 (b) – Service of Citation
    - iii. Rule 510.4 (c) – Service by Delivery to Premises
    - iv. Rule 510.4 (a)(10) – Computation of Time Trial
- H. Conflict in the Texas Property Code 24.0052, 24.0053, 24.0054 with the Texas Rules of Civil Procedure 510 (a), and 510 (b), and which prevails.

**Instructor Note:** The Rules of Civil Procedure provides for the issuance of a Writ of Restitution when the pauper fails to pay the rent into the court. The Property Code provides for the issuance of a Writ of Possession. Property Code prevails. Rules cannot supersede law. In landlord tenant relations, Writ of Restitution was changed to Writ of Possession in the early 1980's.

- a. Rules of Civil Procedure:
  - i. Rule 510.9 (c) (1) – Pauper’s Affidavit Statement of inability to pay
  - ii. Rule 510.9 (c) (5) – Pauper’s Affidavit in Nonpayment of Rent Appeals
  - iii. Rule 2 – Scope of Rules
- b. Property Code:
  - i. Sec. 24.0052 – Tenant Appeal on Pauper’s Affidavit
  - ii. Sec. 24.0053 – Payment of Rent During Appeal of Eviction
  - iii. Sec. 24.0054 – Tenant’s Failure to Pay Rent During Appeal

**5.6 Identify the requirements of a Writ of Possession.**

A. Eviction Writ of Possession

- a. Property Code Sec. 24.0061 – Writ of Possession
- b. Tax Code Sec. 33.51 – Writ of Possession
- c. Rules of Civil Procedure; Rule 510.8 (d) – Writ of Possession

**Instructor Note:** The instructor should discuss that a writ of possession cannot be executed 90 days after the judgment for possession is signed.

B. Officer duties as stated in the Writ of Possession

- a. Property Code 24.061 – Writ of Possession

**Instructor Note:** The instructor should discuss each of these duties.

C. Officer requirements if tenant’s property is stored.

- a. Property Code Sec. 24.0062 – Warehouseman’s Lien

**Instructor Note:** The instructor should have a sample storage notification.

**5.7 Define premises in Chapter 94 of the Texas Property Code and identify and discuss the section of the Transportation Code.**

A. Chapter 94 of the Texas Property Code

- a. Property Code Sec. 94.001 (9) – Definitions

B. Applicability of Tex Prop Code Chapter 94 to manufactured homes

a. Property Code:

- i. Sec. 94.001 (1) – (11) – Definitions
- ii. Sec. 94.002 – Applicability

- iii. Sec. 94.003 – Waiver of Rights and Duties
- iv. Sec. 94.004 – Landlord’s Right of Entry
- C. Who determines if the manufactured home is to be removed from the space after the writ of possession is issued.
  - a. Property Code Sec. 94.203 – Eviction Procedures Generally

**Instructor Note:** Once the writ is issued the landlord may exclude the tenant from the premise without removing the manufactured home from the premise. The landlord does not have to go to the expense to move home and the tenant cannot live in it. The landlord may return to move the home. Property Code Sec. 94.203(a).

## Unit 6: Tax Foreclosure Suits

### 6.1 Identify tax foreclosure as a lien enforcement action and matters relating to tax warrant.

- A. Tax Foreclosure – A public authority’s seizure and sale of property for nonpayment of taxes. (Black’s Law Ninth Edition P719)
- B. Tax foreclosure as a lien enforcement action.
  - a. Tax Code Sec. 33.41 – Suit to Collect Delinquent Tax
- C. Tax Warrant as a seizure of Personal or Real property warrant.
  - a. Sale of personal property under a Tax Warrant seizure
    - i. Tax Code Sec. 33.23 through 33.25
  - b. Sale of real property under a Tax Warrant seizure
    - i. Tax Code Sec. 33.93 – Tax Warrant
    - ii. Tax Code Sec. 33.94 – Notice of Tax Sale
  - c. Tax Code Sec. 33.21 – Property Subject to Seizure
  - d. Tax Code Sec. 33.22 – Institution of Seizure
  - e. Tax Code Sec. 33.23 – Tax Warrant
  - f. Tax Code Sec. 33.41 – Suit to Collect Delinquent Tax
  - g. Tax Code Sec. 33.91 – Property Subject to Seizure by Municipality
  - h. Tax Code Sec. 33.911 – Property Subject to Seizure by County
- D. Sale procedure for property seized under a Tax Warrant
  - a. Tax Code Sec. 33.25 – Tax Sale; Notice; Method; Disposition of Proceeds

- b. Tax Code Sec. 33.24 – Bond for Payment of Taxes
- c. Rules of Civil Process; Rule 649 – Sale of Personal Property
- d. Tax Code Sec. 33.94 – Notice of Tax Sale
- e. Tax Code Sec. 34.01 – Sale of Property
- f. Tax Code Sec. 33.53 – Order of Sale; Payment Before Sale
- g. Rules of Civil Process; Rule 650 – Notice of Sale of Personal Property
- h. Tax Code Sec. 33.41 – Suit to Collect Delinquent Tax
- i. Tax Code Sec. 33.49 – Liability of Taxing Unit for Costs
- j. Rules of Civil Process; Rule 647 – Notice of Sale of Real Estate
- k. Rules of Civil Process; Rule 652 – Purchaser Failing to Comply

**6.2 Define order of sale (Real Property) and identify sale procedures for the sale of real property (real estate) in a tax foreclosure suit.**

- A. Order of sale
  - a. Order –
    - i. A command, direction, or instruction.
    - ii. A written direction or command delivered by a court or judge. (Black’s Law Ninth Edition P1206)
  - b. Foreclosure Sale – The sale of mortgaged property, authorized by a court decree or power of sale clause, to satisfy the debt (Black’s Law Ninth Edition P1455)
- B. Sale procedures for the sale of real property (real estate) in a tax foreclosure suit.
  - a. Tax Code Sec. 34.01 – Sale of Property
  - b. Tax Code Sec. 34.015 – Persons Eligible to Purchase Real Property
  - c. Tax Code Sec. 33.50 – Adjudged Value
    - i. Sec 33.50 (b) and (c)
  - d. Tax Code Sec. 34.02 – Distribution of Proceeds
  - e. Tax Code Sec. 34.03 – Disposition of Excess Proceeds
  - f. Tax Code Sec. 34.04 – Claims for Excess Proceeds
  - g. Tax Code Sec. 34.05 – Resale by Taxing Unit
  - h. Tax Code Sec. 34.08 – Challenge to Validity of Tax Sale
  - i. Tax Code Sec. 34.21 – Right of Redemption
  - j. Tax Code Sec. 33.53 – Order of Sale; Payment Before Sale
  - k. Rules of Civil Process; Rule 647 – Notice of Sale of Real Estate
  - l. Rules of Civil Process; Rule 648 – “Courthouse Door” Defined

**Instructor Note:** The tax foreclosure Order of Sale expires 181 days after the issue date. Tex. Tax Code Sec. 33.53(1). TRCP Rule 621 (judgment enforcement documents expire in 30, 60 or 90 days) does not apply to the Tax Order of Sale.

**Instructor Note:** When a tax entity requests the sheriff or constable to resale a struck off property, the officer will follow the sale rules for a Writ of Execution sale, not The Tax Property Code Sec.34.01.

**Instructor Note:** Real property sold under a tax warrant may be sold for less than the Appraised value or the taxes owed. The tax warrant was obtained because the taxing unit knew it would not sell for either. They proved the property had been abandon for at least a year and the value was less than either amount to have the warrant issued.

## **Unit 7: Protective Orders**

**Instructor Note:** Protective Orders are issued from numerous codes. This section primarily addresses Family Violence Protective Orders.

### **7.1 Identify the procedures for protective orders.**

#### **A. Protective Order**

1. A court order prohibiting or restricting a party from engaging in conduct... that unduly annoys or burdens the opposing party or a third-party witness. (Black's Law Dictionary 2009, P. 1343)
2. A civil court order issued to prevent continuing acts of family violence (Texas Attorney General website)

#### **B. Identify courts who may issue Protective Orders.**

#### **C. Identify how service is accomplished.**

#### **D. Identify how long a Protective Order remains in effect.**

#### **E. Identify how out of state Protective Orders are enforced.**

- a. Family Code Ch. 85 – Subchapter A: Findings and Orders
- b. Family Code Ch. 85 – Subchapter B: Contents of Protective Order
- c. Family Code Ch. 85 – Subchapter C: Delivery of Protective Order
- d. Penal Code Sec. 25.07 – Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case
- e. Family Code Ch. 88 – Uniform Interstate Enforcement of Protective Orders Act (Uniform Interstate Enforcement of Domestic Violence Protection Orders Act)
- f. Code of Criminal Procedure Sec. 5.04 – Duties of Peace Officers
- g. Family Code Ch. 86 – Law Enforcement Duties Relating to Protective Orders

### **7.2 Identify the process of a Magistrate's Emergency Order.**

- A. When this Order may issue.
  - a. Code of Criminal Procedure Sec. 17.291 – Further Detention of Certain Persons
- B. Duration the Order remains in effect.
  - a. Code of Criminal Procedure Sec. 17.292(j) – Magistrate’s Order For Emergency Protection
- C. How the order is enforced.
  - a. Penal Code Sec. 25.07 – Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case

**7.3 Identify the process for a Temporary Ex Parte Order.**

- A. Identify courts who may issue the Ex Parte Order.
  - a. Family Code Ch. 83 – Temporary Ex Parte Orders
- B. Identify service requirements.
  - a. Rules of Civil Procedure; Rule 689 – Service and return
- C. Identify the duration of the Order.
  - a. Family Code Sec. 83.002 – Duration of Order; Extension
- D. Identify how the Order is enforced.
  - a. Penal Code Sec. 25.07 – Violation of Certain Court Orders

**Unit 8: Other Writs**

**8.1 Identify the procedures of a writ of retrieval.**

- A. Property Code Sec. 24A.002 – Writ Authorizing Entry and Property Retrieval; Peace Officer to Accompany  
Property Code Sec. 24A.0021 – Temporary Ex Parte Writ Authorizing Entry and Property Retrieval

**8.2 Identify the officer’s duties as they pertain to Texas Property Code 24A.003.**

- A. Property Code Sec. 24A.003. – Authorized Entry Procedures; Duties of Peace Officer