

Does your Receiver know how to play Turnover Monopoly?



The following is information you may find useful to you as Judge to assist you in determining a proposed receiver's knowledge/ qualifications

An answer is not provided to each bullet point; however, these points are things that you may see in a proposed order.

** (You should verify this information as statutes and case law change)*

- Property code 42.001 (b)(1) wages not yet paid in any form (paycheck, cash or property) for personal service performed by the judgment debtor are not subject to turnover.
- 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)
- Social Security Payments –Social Security benefits enjoy a federal exemption that is not destroyed when the money is deposited into an account.
- Waiting period to issue the turnover order?
 - **No need to wait 30 days** after the judgment. *Childre v. Great Sw. Life Ins. Co.*, 700 S.W 2d 284 (Tex. App. – Dallas 1985, no writ) The Court analogized that a turnover receivership is in the nature of an attachment and a garnishment so the 30-day waiting period is not required.
 - **Wait 30 days** after a final judgment is signed. (TRCP 627- the clerk of the court or justice of the peace shall issue the execution upon such judgment... after the expiration of thirty days from the time a final judgment is signed.)

- Also consider TRCP 505.3- Motion to Set Aside, Reinstate and New Trial with TRCP 506.1 – Appeal within 21 days after the judgment is signed or the motion to reinstate, the motion to set aside, or the motion for new trial, if any, is denied.
- Notice to the defendant and opportunity to be heard are not required by the turnover statute.
 - An ex parte turnover order does not unfairly surprise a judgment debtor because the judgment puts the debtor on notice that post-judgment collection proceedings will follow.
- Debtor's shares in a corporation:
 - If the court orders turnover of the judgment debtor's share in a corporation and it can be proved that the judgment debtor owns all the stock, the receiver can sell the corporation's property so long as the rights of the corporation's creditors are not prejudiced. Newman v. Toy, 926 S.W.2d 629 (Tex. App. – Austin 1996. Writ denied).
- Using Turnover against third parties:
 - The general rule is that the turnover statute is not applied against someone who is not the judgement debtor. No Turnover against a third party who is a Stranger.
 - Nonexempt property held by a 3rd Party, if owned by the judgment debtor, is subject to turnover because the property is subject to his possession and control
 - The turnover statute is a procedural remedy not intended to alter the substantive rights of the parties.
 - There is a limited exception to the general rule, allowing turnover against third parties who hold property of the debtor.

- There is statutory authority for the exception, at least in one situation. Under Tex. Civ. Prac. & Rem. Code Ann. §31.010 (Vernon 2008), the judgment debtor's bank may rely on a certified copy of a turnover order provided by a turnover receiver or a judgment creditor. The bank is a third party holding the defendant's property. The bank is not liable to its customer for compliance with a receivership order.
 - Money in the Bank and Levy on bank accounts- Money in the bank is fair game (except specifically exempt accounts, such as IRAs.)
 - Stock in the hands of third parties.
- What information can receiver obtain from third parties?
 - Receiver can demand copies of credit applications, contracts and leases from anyone who has accepted payments from the defendant, such as his mortgage company and the finance company on his car.
- Important Third Parties Cases:
 - Beaumont Bank N.A. v. Buller, 806 S.W.2d 223, 227 (Tex. 1991)
 - Dale v. Finance America Corp. 929 S.W.2d 495 (Tex. App. – Fort Worth 1996, writ denied)
 - Ross v. National Center for Employment of the Disabled, 170 S.W.3d 635 (Tex.App- El Paso 2005, reversed on other grounds, 197 S.W.3d 795 (Tex. 2006))
- Get a copy of the lease from the landlord
 - Turnover used to reach Real Property and Property outside Texas
 - Levy on proceeds from a lawsuit
 - Capture the defendant's mail

- Homestead- Proceeds from the sale of a homestead remain exempt for 6 months, even if the money is not used to purchase another homestead.
- IRA distributions - Amounts distributed from a retirement plan are exempt for 60 days, if the amounts qualify as a non-taxable rollover contribution to another qualifying account. Tex. Prop. Code § 42.0021 (c).
- Partnership Interest and Turnover – Once a distribution has been paid to the defendant, it becomes the defendant’s property, subject to turnover.
- CPRC Chapter 64 does not apply to turnover receivership. The intent and functioning of the §31.002 turnover receivership is not at all like that of a Chapter 64 receivership. The point of the turnover statute is to aid the diligent creditor in collecting its judgment by compelling the defendant to turn over its non-exempt property for liquidation. In contrast, the Chapter 64 receivership contemplates a receiver running a business or preserving property in a prejudgment context.

Challenges to the Order:

- Is the order Final = if so:
- Can you Appeal? (plenary power has passed)
- Motion for new Trial (No trial was had)
- Bill of Review?
- Mandamus (if believed the judgment is void) and not if an appeal is a viable remedy at law and a void judgment will not support a turnover.
- Plea to the Jurisdiction- try to defeat the action without regard to whether the claims accreted have merit. If the plea challenges facts of the court’s jurisdiction (raises a question regarding the court’s jurisdiction.)

