

Information & Instructions: ~~Post judgment turnover and receivership~~

PREVIEW

1. The purpose of a turnover order or a receivership is to provide a legal remedy to assist a judgment creditor to secure satisfaction of a final civil judgment.
2. A receivership allows for the appointment of a receiver to take possession of the judgment debtor's nonexempt assets, business and property.
3. The remedy was designed to more easily facilitate the collection of contract rights, accounts receivables, commissions owed, money payable at a future date, negotiable instruments, stocks, etc.

Form: ~~Application for the appointment of receiver; turnover of property~~

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CAUSE NUMBER _____

**[Name],
PLAINTIFF**

IN THE [Type of Court] COURT

[Court number]

vs.

**[Name],
DEFENDANT**

OF [NAME], COUNTY, TEXAS

**APPLICATION FOR THE APPOINTMENT OF A RECEIVER
AND THE TURNOVER OF PROPERTY**

THIS DOCUMENT

Plaintiff, [name], a judgment creditor in the above styled and numbered cause moves this Court to enter a turnover order against [name], Defendant and as grounds therefore would show the following:

1. JUDGMENT

1.1. On or about _____, this Court entered a judgment against Defendant, [name], jointly and severally, in the principal sum of \$[Amount], plus prejudgment interest of \$[Amount] and Post judgment interest of \$[Amount], plus attorney fees in the amount of \$[Amount], plus costs of court in the amount of \$[Amount].

1.2 As of this date, Plaintiff has received from the Defendant \$[Amount] in payment of this judgment.

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1.3 The remainder of that judgment in an amount of excess of \$[Amount] remains unsatisfied.

PREVIEW

2. DEFENDANT

2.1 Defendant is a [identify if a business or an individual] and resides at [address], [Name of County], Texas and has [its or his or her] principal residence at [Address].

2.2 Applicant has been unable to discover or seize any of Defendant's assets that are subject to execution.

2.3 Further, the Defendant [has made partial payments in the amount of \$[Amount] or has not made a good faith effort to pay the underlying judgment].

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3. ABSTRACT OF JUDGMENT

3.1. An abstract of Plaintiff's judgment was issued by the District Clerk of [Name of County], Texas on or about _____.

3.2. That abstract of judgment has been filed in [Name of County] and elsewhere, if necessary, thus creating a judgment lien on Defendant's property.

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4. COLLECTION EFFORTS

4.1. Plaintiff's efforts to collect this judgment by garnishment execution have been unsuccessful for the following reasons:

- a. [list why unable to garnish].
- b. [list why execution has not been effective].
- c. [list specific reasons why the turnover should be granted, for example: creditor has

reason to believe that Defendant maintains a significant interest in the control of [Name] (name of business) and as that business has assets that may be used to satisfy the debt or Defendant has transferred assets from _____ (himself or herself) and caused the incorporation of a new

business known as [Name] (name of business) and that the assets should be used to satisfy the

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judgment or Defendant has taken the following actions to hinder Plaintiff in attempts to collect the judgment _____ (state the specific facts).]

5. ENTITLEMENT TO RELIEF

5.1. Plaintiff has reason to believe that the Defendant has transferred assets to friends, close associates or relatives so as to hinder Plaintiff in its attempts to collect its judgment.

5.2. The above described actions compel the appointment of a receiver pursuant to this application.

5.3. Plaintiff is entitled to the appointment of a receiver and the turnover of property.

5.4. In addition to the powers to be conferred on the receiver by law and by order of this Court, Plaintiff also requests that the receiver be vested with the powers of a master in chancery.

6. RECEIVER'S POWERS AND DUTIES

6.1. The proposed powers, duties and responsibility of the receiver are more particularly stated in the proposed form of order which is submitted contemporaneously with this application.

6.2. In order to aid the Court, Plaintiff recommends the following person to be qualified for the position of receiver: [name] is a partner in the Law Firm of _____ and is familiar with post judgment collection laws, and has handled similar collection cases in the past.

6.3. The foregoing person is a disinterested adult and qualified voter residing in [Name of County], Texas.

8. PRIOR DISCOVERY EFFORTS

7.1. Further, Plaintiff has served interrogatories in aid of judgment but the Defendant has failed and refused to supply any useful information regarding Plaintiff's assets.

7.2. The underlying judgment has not been stayed by the posting of supersedeas bond or any other means.

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8. DOCUMENTS REQUEST

PREVIEW

8.1 The following property, documents and records are hereby requested:

a. All deeds conveying an interest to [defendant], individually and/or d/b/a [name] of any real property located in the State of Texas.

b. All oil and gas leases in which [defendant], individually and/or d/b/a [name] owns any interest.

c. All agreements, books and records of [defendant], individually and/or d/b/a [name] showing any commissions receivable, accounts receivable, notes receivable, and other monies or funds due or to be due to [defendant], individually and/or d/b/a [name].

d. All stock certificates owned or held by [defendant] individually and/or d/b/a [name].

e. All cash money of [defendant] individually and/or d/b/a [name].

f. Books and records concerning any checking account, savings account, or certificates of deposit held by any banking institution of any nature held by [defendant], individually and/or d/b/a [name].

g. Any and all joint ventures, partnerships, or limited partnership agreements or certificates (or copies thereof) reflecting any interest owned by [defendant], individually and/or d/b/a [name].

8.2 Applicant further requests that:

a. All such documents be held by the bailiff subject to further order of this Court.

b. Plaintiff or its attorney be allowed to inspect such documents under the bailiff's supervision.

8.3 Applicant further requests this Court, after hearing, to:

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a. Enter an order assigning directly to Applicant all of the Defendant's nonexempt funds.

b. Enter an order assigning directly to Applicant all of Defendant's right and entitlement to receive any commissions, accounts receivable, notes receivable, or other funds or money to which Defendant is entitled.

c. For such other and further relief, either general or special, at law or in equity, that the Court deems proper.

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9. BONDS

9.1 Plaintiff further states that it will file the appropriate bonds, if any, required by the Court upon granting this Application, and Defendant will facilitate the filing of a receiver's oath by the receiver appointed by the Court, and Plaintiff will otherwise aid the Court in the implementation of the relief sought in this Application.

10. INVENTORY

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10.1 Plaintiff requests the Court to order the Defendant to describe and inventory all of [his or her] property which [he or she] claims to be exempt from attachment, execution or seizure.

11. GRANT THE RELIEF WITHOUT A PRIOR HEARING

11.1 Plaintiff requests the Court to enter a turnover order without a prior hearing because Plaintiff fears that the Defendant may secrete or otherwise remove its assets which may irreversibly damage Plaintiff's right to collect its judgment.

11.2 Plaintiff requests the Court to order the Defendant to deliver to any Sheriff or Constable, all legally allowable property including all nonexempt property.

11.3 Plaintiff requests that the Court order that the Defendant deliver to any Sheriff or Constable all legally allowable property including all nonexempt property.

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a. Canceled checks, bank statements, payroll checks, financial statements, loan applications, any money or other thing of value for the last [twelve] months;

b. Cash on hand;

c. Automobiles;

d. Furniture (home or business);

e. Stocks or bonds;

f. Sporting equipment;

g. Stamp or coin collections;

h. Firearms and ammunition;

i. Art work such as paintings, rugs, vases, sculptures, photographs, etc.;

j. Camera or other photographic equipment;

k. Insurance policies;

l. Stereo equipment, including records, tapes and cassettes;

m. Contents of any safety deposit box; and

n. Trust Agreements under which the Judgment Debtor is beneficiary.

12. ATTORNEY'S FEES

12.1 Plaintiff is entitled to recover its reasonable costs and attorney fees incurred in attempting to collect its judgment.

12.2 Plaintiff alleges that such reasonable attorney fees are at least \$[Amount].

Applicant prays this Court to enter a turnover order, ordering Defendant to produce and turnover to the bailiff at a hearing set by this Court all of the foregoing requested property,

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documents and records and to show cause why a receiver should not be appointed and a turnover order entered.

PREVIEW

Respectfully Submitted,

[Law Firm Name]

By _____

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[Attorney's Name]
Attorney for Plaintiff
[Attorney's Address]
[Telephone Number]
[Facsimile Number]
[Bar Card Number]

Form: Affidavit in support of application for appointment of receiver; turnover of property

State of Texas

County of _____

THIS DOCUMENT

AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared [name of plaintiff], Plaintiff, Judgment Creditor of [name of debtor], Debtor, who on [his or her] oath did depose and state that [he or she] has read the foregoing Application and the statements of fact contained in that Application are true and correct of [his or her] own personal knowledge.

Affiant's Signature

Affiant on oath swears that the statements are true and correct based on his or her personal knowledge and Affiant has:

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State of Texas

County of [County Name]

Subscribed and sworn to before me on _____ by [Name]

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Signature of officer

Notary's typed or printed name

My commission expires:

[or Notary's Stamp]

Form: Order appointing receiver

CAUSE NUMBER _____

[Name]
PLAINTIFF

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IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

ORDER

On _____, came on for consideration before this Honorable Court, the application of [name of plaintiff], Plaintiff in judgment, for the appointment of a receiver and entry of a turnover order for the collection of the judgment held by Plaintiff against [name of defendant], Defendant, and this Court having examined the judgment previously entered by this Court, as well as the pleadings on file, is of the opinion that Plaintiff's application for the appointment of a receiver and entry of a turnover order should be granted. It is hereby:

Ordered, adjudged, and decreed that [name], a resident of [Name of County], Texas and a qualified voter of this State, be appointed receiver under the conditions as set out in this order.

Ordered, adjudged, and decreed that the receiver shall be a receiver of all property of the Defendant, not set aside to [him or her] as exempt property under the applicable provisions of law, and the receiver shall have full power and authority to take possession of and sell all nonexempt

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property of the Defendant. In this regard, the receiver should inventory all property of the judgment which is exempt from attachment, execution or seizure. It is further

PREVIEW

Ordered, adjudged, and decreed that the receiver shall have all powers as provided for by law for receivers, including the right to operate and manage the business and/or affairs of the Defendant, when in the sound and sole discretion of the receiver, that action shall be deemed more appropriate and proper to secure the payment and satisfaction of the judgment previously entered.

The receiver shall also be vested with the powers of a master in chancery as further ordered below.

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The receiver appointed by this Order shall deposit all monies as shall come into [his or her] possession or from any other source in a special account as shall be established by [him or her] in a banking institution organized to do business in [Name of County], Texas under the laws of the State of Texas or the laws of the United States of America.

It is further ordered, adjudged and decreed that Defendant, [name], is directed to forthwith turn over to any Sheriff or Constable in this state, pursuant to this order, all personal property in the possession of or under control of the Defendant, including:

THIS DOCUMENT

1. Canceled checks, bank statements, payroll checks, financial statements, loan applications, any money or other thing of value for the last [twelve] months;

2. Cash on hand;

3. Automobiles;

4. Furniture;

5. Stocks or bonds;

6. Sporting equipment;

7. Stamp or coin collections;

8. Firearms and ammunition

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9. Art work such as paintings, rugs, vases, sculptures, photographs, etc.;
10. Camera or other photographic equipment;
11. Insurance policies;
12. Stereo equipment including records, tapes and cassettes;
13. Contents of any safety deposit box; and
14. Trust Agreements under which the Defendant is a beneficiary.

This property is to be stored by the Sheriff or Constable in a bonded warehouse selected by the Sheriff or Constable pending further order of this Court. At the time the foregoing property is seized pursuant to this order or as soon thereafter as reasonably practicable, the Sheriff or Constable is directed to make an inventory of all property seized, that inventory to be filed with the Court. Plaintiff and the Judgment Debtor shall be allowed reasonable access to the property during regular business hours. Thereafter, the Sheriff or Constable shall be authorized to sell at public auction Defendant's nonexempt property.

All costs of this proceeding are taxed against the Defendant, including reasonable attorney fees in the amount of \$[Amount].

Let execution and such other writs and processes as necessary issue in order to enforce this order.

Signed on _____.

THANK YOU

JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

[Law Firm's or Attorney's Name]

Attorney for Plaintiff

[Address]

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[Telephone & facsimile numbers]
Texas Bar no. [Number]

PREVIEW

APPROVED AS TO FORM ONLY:

[Law Firm's or Attorney's Name]
Attorney for Defendant
[Address]
[Telephone & facsimile numbers]
Texas Bar no. [Number]

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