

Information & Instructions: Application for Garnishment Prior to a Judgment

PREVIEW

1. To seize debtor's funds or property which is owed to the debtor by a third person.

2. See the following Texas Rules of Civil Procedure on garnishment:

TRCP 657 Section Judgment final for garnishment;

TRCP 658 Section Application for writ of garnishment and order;

TRCP 658A Section Bond for garnishment;

TRCP 659 Section Case docketed;

TRCP 661 Section Form of writ;

TRCP 662 Section Delivery of writ;

TRCP 663 Section Execution and return of writ;

TRCP 663A Section Service of writ on defendant;

TRCP 664 Section Replevy by defendant;

TRCP 664A Section Dissolution or modification of Writ of Garnishment;

TRCP 665 Section Answer to writ;

TRCP 666 Section Garnishee discharged;

TRCP 667 Section Judgment by default;

TRCP 668 Section Judgment when garnishee is indebted;

TRCP 669 Section Judgment for effects;

TRCP 670 Section Refusal to deliver effects;

TRCP 672 Section Sale of effects;

TRCP 673 Section Traverse;

TRCP 674 Section Trial of issue;

TRCP 675 Section Located notice;

TRCP 676 Section Issue tried as in other cases;

TRCP 677 Section Costs;

TRCP 678 Section Garnishee discharged on proof;

TRCP 679 Section Amendment; and

TRCP 680 §93A Rules applicable to injunctions.

3. See Texas Civil Practice and Remedies Code, Chapter 63, and Texas Revised Civil Statutes articles 4076-4078 for references concerning garnishment.

Information & Instructions: Procedure for garnishment

1. Plaintiff must file or have on file an original petition seeking to obtain a judgment for the monies owed or for enforcement of his or her lien to recover the property sought to be garnished, or plaintiff must have previously obtained a judgment against the debtor.

2. Plaintiff must file an application for garnishment which includes an affidavit that the application is true and correct and an affidavit setting forth the grounds which support the application.

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3. Plaintiff must file an order granting the application for garnishment. Garnishment is handled ex parte because if defendant is given notice of the fact that his or her funds will be garnished, most debtors will withdraw the funds prior to the hearing. In order to obtain a garnishment, plaintiff must be able to plead and prove that the debtor is justly indebted to the plaintiff and that the debtor has no property in Texas which is available and subject to execution.

Form: Application for writ of garnishment prior to judgment

CAUSE NUMBER _____

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

vs.
[Name],
DEFENDANT

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[Court number]
OF [NAME], COUNTY, TEXAS

**APPLICATION FOR WRIT OF
GARNISHMENT PRIOR TO JUDGMENT**

[name of plaintiff], Plaintiff, files an application for a Writ of Garnishment prior to judgment and states to the Court the following grounds in support of that writ:

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- 1.1 Plaintiff is [name].
- 1.2 Defendant is [name].
- 1.3 Garnishee is [name], who may be served with process at [address].

2. ANCILLARY ACTION

2.1 Pursuant to the petition filed in the above designated court and caption, Plaintiff requests the following relief: [state the relief requested by plaintiff].

THANK YOU

3. FACTS

3.1 Plaintiff has reason to believe and has sufficient justification to assert that Garnishee has property owed to or belonging to Defendant or is indebted to Defendant. Plaintiff believes that property to be located at [address]. Plaintiff further believes that Defendant does not own, possess or control

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property within the State of Texas that is subject to execution or that is sufficient to satisfy the debt due and owing to Plaintiff. Plaintiff further states that this Garnishment is not requested for the purposes of injuring, harassing or harming the Defendant or Garnishee but to insure that justice be done and to secure the debt owed to Plaintiff.

PREVIEW

4. FACTS

4.1 The facts that entitle Plaintiff to obtain this garnishment are as follows: [state the facts which entitle plaintiff to seek garnishment].

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5. AFFIDAVIT

5.1 Plaintiff is entitled to the issuance of a Writ of Garnishment prior to judgment on the grounds stated above and in the affidavit, a copy of which, marked Exhibit "A", is attached and incorporated by reference.

5.1 The affidavit establishes sufficient grounds and cause to support the issuance of a Writ of Garnishment without notice to Defendant or Garnishee.

THIS DOCUMENT

PRAYER

Plaintiff prays that a Writ of Garnishment be issued prior to judgment and for such other and further relief to which Plaintiff may be justly entitled.

Respectfully Submitted,

[Law Firm Name]

THANK YOU

By _____

[Attorney's Name]

Attorney for Plaintiff

[Attorney's Address]

[Telephone Number]

[Facsimile Number]

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[Bar Card Number]

PREVIEW

Form: Affidavit for writ before judgment

EXHIBIT "A" AFFIDAVIT

State of Texas
County of _____

Before me, the undersigned authority, on this day personally appeared [name], authorized agent of [name], Plaintiff, who being by me duly sworn, states on oath that:

1. I, [name of Affiant], and I am [state Affiant's relationship to plaintiff], for [name of plaintiff]. I am duly qualified and authorized to make this affidavit.
2. I am employed by [name of plaintiff], Plaintiff, and I have care, custody and control of the records concerning the accounting of [name of defendant], Defendant.
3. Those records show that a total sum of \$[Amount], exclusive of interest or other charges, is now due and payable by Defendant to Plaintiff. The total amount thereof is due to Plaintiff by Defendant and all just and lawful offsets, payments and credits have been allowed.
4. I have read this Application for Writ of Garnishment, and the attached Exhibits. The Application and exhibits are within my personal knowledge and are just and true.
5. This debt is just, due and unpaid and within my knowledge, Defendant does not own, possess or control property within this state that is sufficient to satisfy the debt due and owing to Plaintiff. Furthermore, this Garnishment is not brought for the purposes of injury, harassment or harm to Defendant or Garnishee.
6. The facts that entitle Plaintiff to a Writ of Garnishment in this cause are [state the facts that entitle plaintiff to a writ of garnishment].

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[Name of Affiant]
THANK YOU

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

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 granting writ of garnishment~~

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CAUSE NUMBER _____

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

ORDER GRANTING WRIT OF
GARNISHMENT PRIOR TO JUDGMENT

THIS DOCUMENT

On _____, the Court heard Plaintiff's Application for Writ of

Garnishment prior to judgment in this cause. Plaintiff appeared by and through [his or her] attorney of record. Defendant was conducted ex parte without notice of Defendant or Garnishee.

After considering the pleadings and other papers on file with the Court, the evidence presented and the argument of counsel, the Court finds and concludes that Plaintiff is entitled to a Writ of Garnishment for the reason that: [state specific facts that entitle plaintiff to the writ of garnishment].

THANK YOU

The Court finds that within Affiant's knowledge Defendant has no property in Defendant's possession, control or custody within the State of Texas that is subject to execution and/or that is

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sufficient to satisfy the debt alleged by Plaintiff. The Court further finds that Garnishment is not issued for purposes of injury, harassment or harm to Defendant or Garnishee.

PREVIEW

It is ORDERED that a Writ of Garnishment prior to judgment be issued against [name of defendant] for property indebtedness in the maximum amount of \$[Amount] on the condition that Plaintiff post a bond in the amount of \$[Amount] payable to Defendant as required by law.

It is further ORDERED that Defendant may replevy any property or indebtedness subject to garnishment by posting a bond in the amount of \$[Amount] and payable to Plaintiff as required and conditioned by law.

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It is ORDERED, ADJUDGED and DECREED that as many writs as Plaintiff deems necessary shall issue.

Signed on _____.

THIS DOCUMENT

JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

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

APPROVED AS TO FORM ONLY:

THANK YOU

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

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