



# Key Note



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Editor, Mona Hart Tucker, ACP

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## *From the Hart*

*If we had no winter, the spring would not be so pleasant; if we did not sometimes taste of adversity, prosperity would not be so welcome.*

- Anne Bradstreet



Don't you love the promise of spring? Flower buds and tree pollen; new-born calves and spider eggs; fresh-plowed garden spots and rampant weeds...

Seems as though every good thing has an equally unpleasant counterpart, doesn't it? But then, conversely, doesn't every dark cloud have a silver lining?

With the warm weather wrapping around us, and Easter rapidly approaching, take a deep breath, let it out slowly, and appreciate the fact that winter is behind us. Maybe you can't quite make yourself do the happy dance, but at least you can clap for the dancers.

Happy Easter!

Mona Hart Tucker, ACP  
President



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**Minutes from the March Membership Meeting will be available at the April 20 meeting.**



## e-Filing in Texas Supreme Court

As of March 28<sup>th</sup>, you can electronically file documents with the Texas Supreme Court, pay your fees, and serve opposing counsel using the Texas.gov electronic filing system.

Details at [www.supreme.courts.state.tx.us](http://www.supreme.courts.state.tx.us).



## **What Did I Forget?**

By J.R. (Ronnie) Horsley

Practicing for a number of years and being older has its disadvantages: we tend to remember selectively, and often only pieces of law and procedure we once knew, but are no longer at the forefront of our practice. In dealing with decade-long events, it is especially troublesome.

A recent conversation with an attorney who practices real estate law, led me to draft this piece. My friend assured me that he had kept a 17-year-old judgment "lien" alive by filing a new

abstract of judgment every ten years. “Did you ever issue execution?” I asked. “No, I wasn’t sure of any property to levy on, but I kept the lien alive with the abstracts.”

### Abstract of Judgment

This invaluable tool is inexpensive and effective. How else could one better protect the interests of a client than by issuing and recording an instrument for less than \$30? This provides the client with a lien on all non-exempt real estate owned by the debtor in the county of recording.

### Texas Property Code 52.002

When can the abstract be issued or prepared? “When the judgment is rendered.” While some courts and clerks still believe they must wait until the appeal time has run (particularly in Justice Courts), this is simply a mistake. The practice in my office is to have an abstract prepared and recorded immediately upon securing the judgment—hopefully the same day.

Who prepares the Abstract? The “judge or justice of the peace” or “clerk of the court” can prepare it, as can the attorney (authorized persons other than the court or clerk must verify the abstract). 52.002 TPC. The most effective method is to prepare the instrument in your own office, and have the recorded instrument returned to you by placing your return address on the face of the abstract. The form can be found in the *Texas Collections Manual*, or any number of easily available sources.

Where is it recorded? The county of the defendant’s known (or believed) residence; the county of the defendant’s family (inherited property); and any other county where property may be owned or bought. I happened to be in line at a clerk’s office, waiting for the attorney ahead of me to pick up 254 abstracts prepared by the clerk. He had a client which had obtained a large judgment against Billie Sol Estes, and intended to record an abstract in every county in Texas, since they weren’t sure where properties might be located.

Since you are to be responsible for any errors in the instrument, you might as well be the one preparing it. Not only this, but once filed, you are responsible to see to it that the clerk has properly indexed and recorded the instrument. *Caruso v. Shropshire*, 954 S.W. 2d 115 (Tex. App.—San Antonio, 1997). Minor errors can be

overlooked, but others can be fatal.

What must be in the abstract? 52.003 Texas Property Code:

1. the names of the plaintiff and defendant;
2. the birthdate of the defendant if available;
3. the last three numbers of the driver’s license of the defendant, if available;
4. the last three numbers of the social security number of the defendant, if available;
5. the number of the suit in which the judgment was rendered;
6. the defendant’s address, or if the address is not shown in the suit, the nature of the citation and the date and place of service of citation;
7. the date on which the judgment was rendered;
8. the amount for which the judgment was rendered and the balance due;
9. the amount of the balance due, if any for child support arrearage; and
10. the rate of interest specified in the judgment.

The section continues that it “may show the mailing address for each plaintiff or judgment creditor,” but don’t be fooled; this is just a tease. 52.0041 TPC imposes a “fine” for failure to include the information (double the recording fee of \$25, whichever is greater).

The clerk is statutorily obliged to record the date and hour of receipt of the abstract, and enter the abstract on the alphabetical index to the real property records, showing:

1. the name of each plaintiff in the judgment;
2. the name of each defendant in the judgment; and
3. the volume and page or instrument number in the records in which the abstract is recorded.

The statutory “check list” seems easy enough to follow, and it is, but only up to a point. If one is allowing the clerk’s office to prepare the abstract, be cautious of misspellings and of a tendency in some offices to consider the style of the case as being the final word on the parties’ identity. No one (except you) wants to read the actual judgment: parties may have been added, or dropped, cross-claims asserted with new

capacities, interveners, third parties, different amounts and interest rates for different parties, and any number of other variations can confuse even the most experienced clerks.

Now that the instrument is recorded in every county in which you know of property (or suspect it), create a calendar entry to re-issue in 9 years and 6 months, and check the calendar for the last execution on the judgment. The abstract lien has a life of 10 years from the “recording and indexing” – not from the date of issue. Separate calendar entries are necessary for each recording in each county, as there may be months, or years between the respective recording events. Recording the new abstract should overlap the life of the predecessor instrument to avoid a gap in the lien.

Regardless of the person preparing the Abstract, the attorney is ultimately responsible for the content and proper recording of the instrument to establish the lien. Reference materials are filled with examples of failed liens resulting from such “confusion”. Failure in the context of the instrument as well as failure in the recording and indexing, can be disastrous, and certainly have an impact on client relations—especially when the only property available to satisfy the judgment has been sold and the lien of your client’s abstract is held invalid.

The two important principles reiterated in *Shropshire*: 1) it is the judgment creditor’s responsibility to insure that the clerk abstracts the judgment properly and, 2) that substantial compliance with the statutory requirements is necessary for a lien to exist. Essentially, again “content” and “recording”. In *Shropshire*, there were 54 plaintiffs who recovered, but listing all of them was tedious, so only one of the plaintiffs was named in the abstract, and indexing took place only in the name of one of the plaintiffs (Joe Shropshire, who it was asserted was acting as attorney-in-fact for the other 53 plaintiffs). Omission of the name of a party to the judgment, whether plaintiff or defendant, in the body of the abstract (context), or the omission in the clerk’s indexing (recording) can be fatal to the lien.

What else could they forget? The “who,” “what,” “where,” and “when”; the correct spelling of the name of the defendant; the date of the judgment; the amount of the judgment; the incorrect designation of the plaintiff or its name.

Indexing under the wrong letter of the alphabet; omitting the name of one or more party – much of which can take place in the clerk’s office, and is only in your control if you check the record.

## Foreign Judgment

### Chapter 35, Texas Civil Practice and Remedies Code

Abstracting a foreign judgment in Texas requires a little additional consideration. Being a “belt and suspenders” person, I tend to believe more is better. The date of rendition, court, and number of the suit in the foreign jurisdiction are included, along with the same information as to when it became a Texas judgment.

Now, we’ve taken care of the paperwork, and all we have to do is wait for the title company to call and cut a check ... well, not exactly.

## Death of the Abstract Lien

As previously discussed, the lien of the abstract has a 10-year life from “recording and indexing.” (52.006 TCPRC) All of which assumes correct content and indexing. Its life is also tied as an umbilical to the life of the judgment. If the judgment is allowed to become dormant, the lien of the abstract dies. Judgments have their own 10-year lifespan (34.001 TCPRC), but, unlike the abstract, the judgment lives for 10 years from the date of rendition, and is kept alive by issuing a writ of execution. If 10 years pass and no writ is issued and sent to the sheriff or constable, the judgment becomes dormant. Issuing successive writs of execution over a period of years can keep the judgment alive indefinitely, but the abstract lien lives on its own calendar, and is not renewed or extended by the issuance of execution.

It should be noted that the statute does not require a new abstract to be prepared. If the “old” instrument otherwise meets the statutory requirements and is accurate in all respects, there is no reason why it can’t simply be re-indexed and re-recorded in the counties where previously filed. The abstract itself, then, as long as the judgment is alive or capable of being revived, cannot die, only the lien of the abstract.

## Life After Death

For the abstract of judgment lien, there is no life after death (dormancy) of the judgment.

Regardless of the age of the abstract, the lien dies with dormancy. The judgment itself, in addition to its 10-year life, has an additional 2 years within which it can be “revived” (31.006 TCPRC), but the abstract must be re-recorded after the revival of the judgment. The new, or re-recorded, abstract of the judgment fixes a lien from the date of its recording and indexing, and a gap in the lien status will exist from the date of dormancy of the judgment to the new recording date.

Keeping two calendars is prudent—one for abstracts and one for executions—keeping in mind the fact that the execution you issued five years after the rendition of your judgment adds 10 years to your judgment from that date, but adds nothing to the life of the lien created by the abstract recorded on the date of the judgment. Scheduling the monitoring of properties of the debtor on which the lien attaches would also be advisable in light of the possibly application of various statues of limitation in the event of a conveyance to or occupation by a third party.

What did I forget? Many things, I’m sure, but the important ones can be handled with proofreading, a good calendar and file management—especially for those who have practiced for decades, and those who hope to.

*J.R. (Ronnie) Horsley is a sole practitioner with Ronnie Horsley, P.C., in Tyler. This article first appeared in the Spring 2011 issue of The College Bulletin, the newsmagazine of the College of the State Bar of Texas, and is reprinted here with the author’s permission.*



## April Meeting

Chad Newman, from Erskine McMahon, will be the speaker at our April 20th meeting, and his topic is “On Doing Good” in civil litigation.

The menu calls for smoked chicken salad sandwiches and soup, from Angelwood Catering. Please RSVP to Sandi Clarke if you plan to attend: [sandi.clarke@boonlaw.com](mailto:sandi.clarke@boonlaw.com). The cost is \$5 per person.



**Remember to bring a little \$ to help support the Rainbow Room!**



# Happy Easter!

# Quality Time

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is to invest it in yourself.

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# CLE Calendar

For additional information about CLE across the State see the SBOT - PD web site at [www.txpd.org](http://www.txpd.org). Also, don't forget that the PD and NALA both offer on-line CLE.

**(Dallas) Diversity University - 4<sup>th</sup> Annual CLE Event, May 6, 2011, Belo Mansion, Dallas.** Registration forms and details may be obtained from the DAPA website / Diversity University Registration page, [http://dallasparalegals.org/files/file/Flyers/2011/DU\\_Registration\\_Form.pdf](http://dallasparalegals.org/files/file/Flyers/2011/DU_Registration_Form.pdf).

**(Galveston) HPA Eighth Annual Spring CLE Seminar, May 13, 2011, Hotel Galvez.** Earn six hours of CLE, including one hour of ethics. Non-HPA-members \$100 until April 22, later \$115. Arrive on Thursday May 12<sup>th</sup> for Casino Night Social. For additional information go to [www.hpatx.org](http://www.hpatx.org).

**(Dallas/Plano) NALA 36<sup>th</sup> Annual Convention, July 27-30, 2011, Marriott at Legacy Town Center.** It isn't too early to make plans. Go to <http://nala.org/convention.aspx> for details.

**(Online) Texas Bar CLE free online seminar.** TexasBarCLE offers a complimentary half hour of participatory MCLE credit. You will find a new topic available every other month. The current topic is "Unforeseen Consequences of Criminal Convictions." [www.texasbarcle.com](http://www.texasbarcle.com).

Check out the **Ten Minute Mentor** on [www.texasbar.com](http://www.texasbar.com). These instructional video presentations are from leading lawyers in their areas of expertise. Each presentation is typically short (around 10 minutes or less), practical, and free. Viewing presentations qualifies for MCLE self-study credit only. Topics available include Daubert challenges, petitions for review, bankruptcy issues, and many more.

**(Online) NALA Campus Live!** has many topics to choose from, and the Texas Board of Legal Specialization has approved certain programs for certification and re-certification. More information is available at [www.nala.org](http://www.nala.org).

**(Online) Free Webinars** sponsored by Litigation Solution, Inc. Contact Todd Kelly at KTS Litigation Support, [mtkelly@ktslitigationsupport.com](mailto:mtkelly@ktslitigationsupport.com), for a schedule and to register.

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Calendar listings and seminars should not be considered as endorsement of any such program or seminar.

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One of the benefits of your membership is NTAP's employment referral service. We receive calls from firms offering employment opportunities. If you are seeking a position or considering a change, we encourage you to use NTAP's employment referral service. If your firm is searching for qualified paralegals, ask your attorney or firm administrator to let us know about current openings.

If you are interested in being listed with the service, mail a current resume and contact information to:

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