



Superseding Judgments Pending Appeal

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Starting Premise and Overview

“A judgment debtor is entitled to supersede the judgment while pursuing an appeal.” *Miga v. Jensen*, 299 S.W.3d 98, 100 (Tex. 2009).

Focusing on money judgments, we’ll cover:

- The why, how, and what of supersedeas
- Application of the net-worth cap
- Bringing and defending net-worth challenges
- A few other tidbits

Practical Tip #1

Visit www.txcourts.gov.

Navigate to “Rules & Standards,” then choose “Rules and Forms.”

Select the Texas Rules of Appellate Procedure and go to TRAP 24.

Print the rule. Mark it up. Highlight it.

Practical Tip #1

The page looks like this:

The screenshot shows the Texas Judicial Branch website. At the top is a banner with the Texas state flag and the text "Texas Judicial BRANCH". Below the banner is a navigation menu with items: Home, Courts, Rules & Forms (highlighted), Organizations, Publications & Training, Programs & Services, Judicial Data, and eFile Texas. A "Media" link is also present below the main menu. The main content area is titled "Rules & Forms" and includes a "Site Search" box. Below the title is a breadcrumb trail: Home / Rules & Forms / Rules & Standards. There are two sidebars: "RULES & FORMS HOME" on the left with a list of links including "Rules & Standards" (which is selected), and "RULES & STANDARDS" on the right. The "RULES & STANDARDS" sidebar contains a section for "Statewide Rules" with a paragraph of text and a table of rules.

| Rule | Last Amended |
|--|---------------|
| Texas Rules of Civil Procedure | April 1, 2025 |
| Texas Rules of Appellate Procedure | April 1, 2025 |
| Texas Rules of Evidence | June 1, 2020 |

Why Supersede?

Debtor's perspective—to preserve the status quo while the case is on appeal.

- Prevents judgment creditor from enforcing the final judgment
- Eliminates most disruptions associated with collection (e.g. post-judgment discovery)

Creditor's perspective—to provide security while the case is on appeal.

- Ensures the judgment will be paid to the extent of the security
- Can include an injunction limiting judgment debtor's ability to transfer assets

How Supersede?

TRAP 24.1

- Supersedeas bond
- Cash deposit in lieu of bond
- Written agreement
- Alternate security as ordered by the court

How Supersede?

Supersedeas bond

Sureties will charge an annual premium between 1% and 4% and generally want the bond to be fully collateralized.

Elements/conditions, e.g.—

- Payable to judgment creditor
- Payable if judgment debtor does not appeal or does not perform judgment

Supersedeas bond

How Supersede?

<https://www.texappcounsel.com/2020/10/how-to-get-a-supersedeas-bond-daniel-huckabay/>



Practical Tip #2

When representing judgment creditor on appeal, make sure and ask appellate court to render judgment against surety

How Supersede?

Cash deposit in lieu of bond

Avoids a bond premium, but not completely free.

By statute, clerk retains:

- 10% of any interest earned on funds deposited into registry
- 5% up to \$50 of any non-interest bearing funds withdrawn from registry

Practical Tip #3

Before tendering funds in lieu of bond, obtain an order for those funds to be placed in an interest-bearing account. This can usually be handled on the uncontested docket.

How Supersede?

Alternate security as ordered by the court

Holding securities or other items of value in court's registry:

- *E.g.*, an irrevocable letter of credit
- Obtain an order allowing in lieu of bond or cash
- Surrender certificate(s) or ownership papers to district clerk

This can be tough because it's subject to the trial court's discretion.

How Supersede?

Alternate security under TRAP 24.2(e) for judgment debtors with net worth under \$10 million

- Judgment debtor must show that posting security under (a)(1) would require it to substantially liquidate interests in real or personal property necessary to the normal course of business
- *No discretion*: If shown, trial court must allow judgment debtor to post alternative security with value sufficient to secure judgment

How Supersede?

Alternate security under TRAP 24.2(e) for judgment debtors with net worth under \$10 million

- Judgment debtor gets to continue managing using, and receiving earnings from property in normal course of business
- This may be a good option for land-rich, cash-poor judgment debtors.

How Supersede?

<https://www.texappcounsel.com/2023/09/supersedeas-and-other-recent-rule-changes/>

Podcast episode covering this topic



Written agreement suspending enforcement

How Supersede?



What Supersede?

TRAP 24.2(a)

For **money judgments**, supersedeas must include:

1. Compensatory damages awarded in the judgment
2. Interest for the estimated duration of the appeal
3. Costs awarded in the judgment

Supersedeas caps: 50% of the judgment debtor's net worth or \$25 million, whichever is lower.

What Supersede?

Compensatory damages

- Actual damages
- Attorney fees as an element of damages
- Prejudgment interest
- Postjudgment interest on the above

Not compensatory damages

- Punitive damages
- Statutory treble damages
- Attorney fees in breach of contract or TUFTA cases
- Postjudgment interest on the above



What Supersede?

What is the “estimated duration of the appeal?”

- Can vary by appellate district
- Third Court of Appeals has held that one year is sufficient (which is quite optimistic)
- Look at OCA data in other courts
- 18 months is probably a safe estimate

Practical Tip #4

Clerks no longer have to approve a bond for it to be effective.

Still, when representing a judgment debtor providing full supersedeas, you might try to reach agreement with opposing counsel on the amount and type of security and the surety, if any.

This may help avoid disputes about the bond or deposit later.

What Supersede?

For judgments involving the recovery of **an interest in real or personal property** trial court sets the amount and type of security, subject to minimums based on value:

- Value of rent or revenue for real property interest
- Value of property interest for personal property

Example: Judgment adjudicating title to land

What Supersede?

For “**other judgments**”—judgments for something other than money or an interest in property—trial court sets the amount and type of security.

Counter-supersedeas: Trial court can deny supersedeas if judgment creditor posts security “in an amount and type that will secure the debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper.”

Example: A temporary injunction.

Substantial Economic Harm

TRAP 24.2(b)

- Trial court "must" lower security amount if judgment debtor "is likely to suffer substantial economic harm" from amount required by TRAP 24.2(a)
- If found, amount must be lowered to something that would not cause "substantial economic harm"

Net-Worth Cap

TRAP 24.2(a)

The amount of security for money judgments “must not exceed” the lesser of 50% of the judgment debtor’s net worth or \$25 million.

How is net worth calculated?

- Net worth is assets less liabilities as determined by GAAP
- The judgment on appeal is a contingent liability and is not included

Net-Worth Procedure

TRAP 24.2(c)

Judgment debtor

- Judgment debtor must file an affidavit stating "complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained."
- Affidavit is prima facie evidence of net worth for purposes of establishing the amount of security required to supersede the judgment.
- Filing the affidavit (and perhaps a nominal cash deposit) supersedes the judgment.
- Collection efforts "must cease."

Net-Worth Procedure

Judgment creditor

- A judgment creditor may file a contest to the debtor's net worth and conduct targeted discovery
- The contest need not be sworn
- A hearing is required

Net-Worth Procedure

Hearing

- Judgment debtor bears the burden of proof
- Treat the contest like a bench trial or a temporary injunction hearing
- Present live witnesses and documentary evidence

Practical Tip #5

Consider retaining an accounting expert to help prepare/oppose the net-worth affidavit and testify at the hearing.

Net-Worth Procedure

Trial court

- Must issue an order determining net worth and the factual basis
- If additional security is required, supersedeas continues for another 20 days to allow judgment debtor to comply
- Net worth determination is reviewable by motion in court of appeals

Net Worth Procedure: What Not to Do

Judgment debtor

- Include the judgment as a liability
- Fail to include assets in the net-worth calculation
- Fail to provide sufficient evidence for the trial court can determine net worth

Judgment creditor (or receiver)

- Try to skip a contest via a "motion to strike" the affidavit
- Set the contest on a submission docket

Injunction

TRAP 24.2(d)

- Trial court may enjoin judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment
- But court's order cannot interfere with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business
- Injunctions are reviewable and may be reversed if overly broad or lacking evidentiary support

Practical Tip #6

Judgment creditors should use care in proving that the injunction is needed and should track TRAP 24.2(d)'s language.



Continuing Jurisdiction / Appellate Review

TRAP 24.3 & 24.4

- Trial court has continuing jurisdiction to review supersedeas issues, even after losing plenary power.
- Court of appeals has jurisdiction to review supersedeas determinations by motion
- Appellate review can be based on conditions existing when judgment was signed, changes occurring afterward



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