

REAL PROPERTY

STANDARD NO(S):

NYSSACD # 111

DATE:

September 1, 2010

REFER TO:

David Smith

I. OBJECTIVE:

It is the objective of the Civil Division to establish procedures for enforcement of real property executions lawfully issued in accordance with provisions of the New York State Civil Practice Law and Rules and other controlling statutes.

II. DETAILS:

A. Definitions:

1. Property Execution – An enforcement instrument issued by a Court Clerk or an attorney acting as an officer of the court, directing the Sheriff to seize property belonging to a judgment debtor to satisfy a money judgment. A money judgment may be enforced against any property, unless the property is exempt pursuant to §5205 or 5206 CPLR.
2. Levy – The taking of property followed by service of an execution. In some cases the service may precede the taking of property. Both elements are necessary to make a valid levy.
3. Judgment Lien – A lien created only when the money judgment has been docketed by the clerk of a county in which the debtor owns or has some interest in real property. This lien then attaches to any real property owned.
4. Judgment Docket/Roll – A book that a Court Clerk keeps for the entry of judgment giving official notice of existing judgment liens to interested parties. The judgment lien is effective for ten (10) years (or longer, if extended), but the ten (10) year period is always measured from the date that the judgment roll was filed by the clerk of the court in which the judgment was first entered.
5. Docketing – When a transcript of a court judgment is filed with the clerk of that county who then docketes the judgment also known as transcribing.

6. Transcripting – When a transcript of a court judgment is filed with the clerk of that county and docketed. Another form of transcripting involves filing a transcript of one county clerk’s judgment docket with other county clerks, creating judgment liens in more than one county.
7. Return – A return is the act of the Sheriff in delivering, to the clerk of the court, the execution with an account of its success or failure in fulfilling its direction.

B. Processing –

1. All standard execution information is required. {CPLR §5230 (a)}. It is required to record:
 - a. Date judgment entered in original court.
 - b. Date the transcript was filed with the County Clerk. If the date is older than ten (10) years no sale can take place unless a court ordered extension of the judgment lien or a notice of levy has been filed with the County Clerk by the Sheriff.
 - c. The names and full addresses of the judgment creditor and judgment debtor must be included, along with the legal description of the real property to be sold. In addition, one or two of the following are encouraged.
 - i. Tax map identification number (i.e. 100.600.03.006).
 - ii. Full printed legal description known as “metes and bounds” i.e. “all that tract or parcel of land”.
 - iii. Property dimensions and acreage known as the Torrens Systems.
 - iv. The book and page reference where the legal description is located in the County Clerks Office.
 - d. The execution must be served on the debtor(s) in the same manner as a summons.
 - e. A letter which states whether the property to be sold is or is not a homestead must accompany the execution. Failure to produce the letter will result in no further sale preparations.
 - i. If not a homestead proceed as normal.
 - ii. If it is a homestead advise the attorney of the need for a court order directing the sale.

- iii. If the attorney wants us to just serve the execution, they must make the request in writing. We should advise him that the sixty (60) day life of the execution begins at the time of service.
 - f. Qualifications for exemptions see NYSSA Real Property Manual, chapter IV, 1, and §5206 CPLR.
 - g. The creditor or name and address of the judgment debtor and every creditor whose judgment was a lien on the property to be sold and of every person who had on record any interest in, or lien on, the real property as of 45 days prior to the sale.
 - i. Advise the attorney of this date.
 - ii. If the 45th day should fall on a Saturday, Sunday or Holiday the list should be prepared for the next business day.
 - h. Everyone, including the judgment debtor, on the list must be served with a notice of sale at least thirty (30) days prior to the sale.
- 2. Fees for receiving the papers, mileage and anticipated expenses will be paid in advance.
 - a. Advanced expenses for a property execution against real property are \$500.00.
 - b. Any other additional Sheriff's expenses.

C. Sale of Real Property –

- 1. The time of the sale is between the 56th and the 63rd day after the first publication of the notice of sale unless extended by a court order or the sale has been postponed by the Sheriff.
- 2. The notice of sale must be advertised in the newspaper published in the county where the property is located. This notice must be published four (4) times, once in four (4) separate fourteen (14) day periods.
 - a. The contents of the notice of sale must have our file number, the names of the debtor, the judgment creditor's attorney, the Sheriff, Undersheriff and the Civil Officer conducting the sale. It must also contain the date the judgment was entered, and/or docketed in the County Clerks office, the legal description, the date of the sale, the date of the notice of sale and a list of the four (4) publishing dates.

- b. After the last publication, the newspaper should deliver “proof of publication” which is an affidavit as to the publication dates and a copy of the actual published notice of sale.
3. The notice of sale must be served on the debtor twice. Once in a form of personal service and the second time by certified mail as part of the 45 day list.
4. The notice must be posted in three (3) public places in the Village of Waterloo, since our sales are always held outside the Civil Office at the County Office Building. In addition, if the property is located outside the Village of Waterloo, three (3) public places in the town where the real property is located, at least 56 days before the sale date.
5. When the IRS has a lien against the property, a special notice of sale should be sent to them. (NYSSA Real Property Manual, chapter VIII, 5.)
6. One week before the sale, review the file. Make sure the appropriate paperwork and all the affidavits are in order and determine the expenses. Review again the day before the sale.
7. The Civil Officer conducting the sale must:
 - a. Read the terms and the Notice of Sale. It is not necessary to read the description.
 - b. State that the successful bidder will have to sign the terms of sale when the bid is accepted and the down payment paid. The purchaser must also pay a \$20.00 deed fee when he accepts delivery of the deed.
 - c. Have all bidders sign in with their name, address, telephone number and company name if acting as their agent.
 - d. No opinions are to be made regarding the condition, lien status, occupancy, utilities etc. Any questions asked regarding these topics are to be referred to their attorney. We are selling only the judgment debtors interest in the property.
 - e. The Seneca County Sheriff's Civil Division reserves the right to use an outside agency (auctioneer) if deemed necessary.
 - f. After announcing the sale, keep track, in writing, who is bidding and how much. After bidding stops ask three (3) more times for more bids. On the third call say “third and final time (state last amount) if no reply state “sold,” the high bid amount and the bidders name or number.

- g. Issue a receipt for the 10% down payment after the successful bidder has signed the terms of sale form. Make arrangements with him for final payment, delivery of the deed and necessary papers, before the 10th day after the sale.
- 8. If the sale is postponed, the deputy must be present at the original time set, so he can advise those who appear and get their name and address for notification of a future sale date, if any. If the sale is rescheduled, obtain additional fees in advance. If the sale is not rescheduled, do a return as unsatisfied.
- 9. Deeds and Affidavits: The Sheriff, as an official, empowered by law to enforce judgments, transfers the debtor's right, title and interests in the real property sold through a Sheriff's deed. This deed will contain the legal description of the property exactly as in the notice of sale.
 - a. Have the attorney supply us with the NYS Department of Taxation form # TP-584 and the RP-5217 which are required by New York State on all transfers of real property. These forms must be filled out by us and filed with the County Clerk's Office.
 - b. All affidavits will be completed and properly executed by the Civil Officer. The purchaser needs these affidavits to defend his ownership and to obtain insurance. Affidavits that should be completed a week before the sale:
 - i. Affidavit of posting
 - ii. Affidavit of service of the notice of sale on the judgment debtor(s)
 - iii. Affidavit of service of the notice of sale of all persons contained in the 45 day list
 - iv. Proof of publication in the newspaper, which is supplied by the publisher
 - v. Affidavit of service of property execution on the judgment debtor
 - vi. Capital gains tax affidavit.

D. Enforcement of Judgment or Order Awarding Possession of Realty –

1. The method of enforcement is an execution delivered to the Sheriff of the realty county for levy. This execution must satisfy the requirements of CPLR 5230, but instead of directing the Sheriff to seize and sell property so as to satisfy a money judgment, the execution or order under CPLR 5102, RPAPL 221 and CPLR 7108 (b) directs who the Sheriff is to put into possession of the real property.
 - a. Secure a copy of the underlying court order.

E. Postponement –

1. We may postpone a sale for the following reasons:
 - a. Unable to serve the debtor with the execution
 - b. Unable to serve persons on the 45 day list thirty (30) days before sale, i.e., we don't receive the 45 day list in time
 - c. No bidders at sale
 - d. Bankruptcy petition filed by debtor, staying the sale
 - e. Court ordered stay
 - f. A defect in either the posted notice of sale or the published notice of sale
2. If the sale is postponed we do not have to publish or post a notice of sale again, except to correct a defective notice, unless ordered by the court.
 - a. The Seneca County Sheriff's Civil Division must give notice of the new sale date, which should be within three (3) weeks of the original date, to the judgment debtor and those who showed at the original sale date.
 - b. The Seneca County Sheriff's Civil Division must also give notice of the new date to those who made a request for notification.
 - i. Such a request must be received by us at least five (5) days before the postponed date, by personal delivery or registered or certified mail return receipt requested. We then serve the postponement notices in the same manner.

F. Stays, Appeals, Bankruptcy –

1. A stay is a temporary condition that prevents us from going any further, but does not authorize release of the property or levies. A stay can occur at most any time during the enforcement cycle.
2. Service of an appeal has the effect of a stay pursuant to CPLR 5519 (a).
 - a. Do not release property or levy on appeal without an order CPLR 5204.
3. If the Seneca County Sheriff's Office receives a bankruptcy filing prior to levy, do not proceed. If received after levy depending upon the time of levy coupled with the time of filing of petition in bankruptcy, you may be required by the bankruptcy court to turn over levied property to them.
 - a. If a sale is scheduled, postpone and notify the bankruptcy court.
 - b. Advise the creditor's attorney of the bankruptcy petition.

G. Restraining Notice –

1. Restraining Notice may be issued by a court clerk or judgment creditor's attorney or a support collection unit. It can be served on any person except the employer of a judgment debtor. This notice prohibits the debtor or obligor from selling, assigning or transferring any property in which they have an interest, except upon direction of the Sheriff or pursuant to a court order, until the judgment or order is satisfied or vacated.
 - a. A restraining notice served upon a person other than the judgment debtor is valid only if, at the time of service, they owe a debt to or possess property of the judgment debtor, or if the judgment creditor states in the restraining notice that a specified debt is owed or property of the judgment debtor is possessed by the person served.
 - b. If, within a year before service of this restraining notice, the notice of exempt property (§5222 (d) & (e) CPLR) has not been served to the judgment debtor, a copy of the restraining notice, together with the notice to judgment debtor shall be mailed by first class or personally delivered to each debtor, within four (4) days of service of the restraining notice.

H. Returns –

1. The deputy will make all returns as either satisfied, part-satisfied or unsatisfied and will stamp all original papers as such.

2. The deputy will complete all necessary forms and reports according to Records Management Directive.