

ORDER OF ATTACHMENT

STANDARD NO(S):

NYSSACD #

DATE:

September 1, 2010

REFER TO:

David Smith

I. OBJECTIVE:

It is the objective of the Civil Division to establish procedures for serving and enforcing lawfully issued Orders of Attachment in accordance with the provisions of the New York State Civil Practice Law and Rules (CPLR) and Civil Directives. See (“**Personal Property**”, “**Vehicles Seized/Towing & Impoundment**”, “**Orders of Seizure**”), this manual.

II. DETAILS:

A. Definitions -

1. Order of Attachment – A provisional remedy, before judgment, where property may be taken into legal custody pending the outcome of any action, except a matrimonial action. It can be used as security for the plaintiff for any judgment he may be awarded, or to allow the court to exercise jurisdiction over the defendant when he cannot be served with a summons.
2. Provisional Remedy – used to protect a litigant’s rights during the course of an action.
3. Undertaking – A bond the plaintiff must post in a total amount fixed by the court, but not less than \$500.00 to cover attorney costs and damages in cases where the defendant ultimately wins.

B. Processing –

1. The Civil Office will log the papers and obtain a file number for all orders and record that number on the papers for service.
2. Obtain three (3) certified copies of the order. Payment for fees and expenses will be collected in advance. The order shall specify the amount to be secured including any interest, costs and Sheriff’s fees and expenses, and be endorsed with the name and address of the plaintiff’s attorney.

3. The attorney of record must file the original with the clerk of the court within ten (10) days of the granting of the order (CPLR §6212 (c)). It is important to look at the granting date when the order is delivered to us. If ten (10) days has elapsed without the §6212 (c) filing, the order should be rejected.
4. Encourage the attorney to attach the affidavits upon which the order is based, and obtain certified copies of the bond.
5. Obtain a letter of instruction from the attorney listing:
 - a. Whether to remove or place the property in custodial care.
 - b. What type of service is requested (levy by service or levy by seizure?).

C. Service –

1. Levy by service is the most common and suggested method of levying on personal property. The levy is made by serving a copy of the order on the defendant or garnishee in the same manner as a summons, except service cannot be made on a designated agent pursuant to CPLR 318.
 - a. Service can be made regardless of who the possessor is and without regard to whether the property is tangible or intangible.
 - i. When the property is intangible, the mechanics are essentially identical to that of the common execution bank levy.
 - ii. When tangible property is to be levied upon, the Sheriff should know ahead of time exactly what is involved. This will facilitate identification and avoid disputes. If the tangibles are in multiple locations the inventory may necessitate greater manpower and coordination. All property should be tagged and its description listed.
 - iii. The same basic rules applied to garnishees also apply to defendants who are in custody of the property to be levied on, whether the property is tangible or not.
 - b. CPLR §6219 requires any garnishee served with an order of attachment to serve on the levying Sheriff a statement telling the Sheriff what property or debts the garnishee has in its custody or control. This must be done within ten (10) days of levy, unless the court has ordered a lesser time.

- c. Any debt or property, against which a money judgment may be enforced, is subject to attachment.
 - d. Levy on Real Property, (CPLR 6216), by filing with the County Clerk where the real property is located.
- 2. Levy by seizure is made by taking into actual custody property capable of delivery. This is done only at the direction of the plaintiff or plaintiff's attorney, and upon furnishing to the Sheriff indemnity as set by the court.
 - a. Make sure the plaintiff is aware that it is their obligation to provide advance expenses for moving and storage of the property. The amount will be determined after a review by the Civil Officer.
 - b. The Civil Office will contact the bonded moving and storage company, requested by the plaintiff, to remove and transport the property to their warehouse for storage.
 - c. The deputy executing the order will verify the property is being inventoried by the moving and storage company as it is removed and will obtain a copy of the completed inventory.
 - d. When taking property into our custody, processing, security and storage will be in accordance with the following steps:
 - i. List the property on a Property Receipt/Evidence Log & Tracking Form.
 - ii. If property is turned over to the SCSO Property/Evidence Room, the completed Property Receipt/Evidence Log & Tracking form will accompany the property which is to be secured in a temporary evidence locker at the LEC for processing.
 - iii. Upon taking actual custody of property, we must then serve a copy of the order of attachment upon the person from whom we took possession in the same manner as a levy by service is accomplished.
 - iv. When the Sheriff has taken into his actual custody property or debts having value sufficient to satisfy the amount specified in the order of attachment, the Sheriff shall notify the defendant and each person upon whom the order of attachment was served that the order of attachment has been fully executed.

- v. Obtain a case report number (CR#) from the E-911 Center and complete an SJS report on the details of the seizure action.
 - vi. Notify the Chief Deputy or higher Command Authority prior to the seizure
- 3. The order of attachment can be served with or without notice (The notice is the summons either served before or after service of the attachment).
 - a. If the action is not started we may be requested to serve the summons. If the summons is not served within sixty (60) days of issuance (date signed by the judge) the order will lapse.
- 4. Note the date signed by the judge.
- 5. If the summons is served by someone other than us, obtain a copy of the proof of service from the attorney of record.
- 6. If the order is served without notice given to the defendant, the plaintiff is required to make a motion to “confirm” the attachment within five (5) days of the levy. For this reason it is important to furnish proof of service immediately to the plaintiff. An order without notice may provide that the Sheriff refrain from taking any property into his actual custody until a further order is issued by the court (CPLR 6211 (b)).
- 7. If the order is served with notice it may allow for the court to grant a temporary restraining order to the defendant.
- 8. Section 6211 (a) states that the order of attachment may be granted at any time prior to judgment. It further states that the Sheriff is to levy at any time before final judgment. So based on this, an order of attachment granted has a valid and enforceable life indeterminate. For example, if the order is granted 2-1-99 and final judgment is entered on 2-1-02, the order will have had a life of three (3) years. If the order was granted 2-1-99 and it is now 2-1-04 and no judgment has been entered, the order has had a life, so far, for five (5) years and is still alive.
- 9. Life of the levy is ninety (90) days. It may be extended by:
 - a. Court order
 - b. Taking custody of the property within ninety (90) days
 - i. After ninety (90) days, the levy is void except for property or debts already taken into custody, collected or received

- c. Plaintiff starting a special proceeding to compel payment or delivery to Sheriff.
- 10. If the property is tangible, we must take that property into custody. If the defendant refuses to turn the property over it is the plaintiff's responsibility to start special proceeding to force delivery.
 - a. The plaintiff can direct us to return or leave the property in the possession of the debtor as long as they make their request in writing and it does not conflict with our duties to the court.
- 11. Hold property until further direction from the court or plaintiff, subject to the payment of Sheriff's fees and expenses.
 - a. Any money collected shall be held in an interest-bearing trust account in a national or state bank or trust company. See (**"Financial Transactions"**), this manual.
- 12. Make an inventory of levied property to include a description of the property seized, the real property levied upon, the names and addresses of all persons served with the order of attachment, and an estimate of the value of all property levied upon, and file with the courts within fifteen (15) days after levy.
 - a. If there is not a standard for establishing value of property seized such as a NADA book, the attorney should be notified to provide us with an estimated value or an appraiser to determine the estimated value.
- 13. An Order of Attachment may be terminated by discharge, vacatur or annulment. Both the discharge and vacatur must be ordered by the court (CPLR 6222 and 6223). An annulment arises without intervention of the court when:
 - a. The action in which it was granted abates or is discontinued.
 - b. A judgment is entered in favor of the plaintiff and is fully satisfied.
 - c. A judgment is entered in favor of the defendant, however if this occurs and the plaintiff is granted a stay and eventually obtains a reversal of the judgment for the defendant, the attachment would be revived.
 - d. An inventory must be filed within fifteen (15) days after service or as soon as possible after the order has been vacated or annulled.

14. A return is not required by article 62 of the CPLR, unless ordered to do so by the court (CPLR 6225).
15. The deputy will complete all necessary forms and reports according to **“Records Management”**, this manual.