

ORDERS OF SEIZURE

STANDARD NO(S):

NYSSACD # 100,110

DATE:

September 1, 2010

REFER TO:

David Smith

I. OBJECTIVE:

It is the objective of the Civil Division to establish guidelines for seizing personal property pursuant to orders of the court(s) for the purpose of determining the right of possession, and hold that property in safe custody for a period of ten (10) days.

II. DETAILS:

A. Definitions -

1. Seizure – The taking into custody of property (chattels) to determine the right of possession.

- B. When the Plaintiff delivers an order of Seizure to the Civil Division, the papers on which the order was granted, the undertaking and a summons and complaint if the action has not been commenced, bearing the index number and the date of filing with the clerk of the court, must be included in the action to recover the chattel. The order must clearly and specifically describe the property to be seized, its value, the address where the property is located and whether the court has included a “break and enter” clause.

1. An Order of Seizure must be signed by a judge.

- C. Obtain at least three (3) sets of papers.

- D. The Civil Division will log the papers and obtain a file number for the case.

- E. Make sure the plaintiff is aware that it is their obligation to provide advance expenses for moving and storage of the property.

1. The Civil Division will contact a bonded moving and storage company, requested by the plaintiff, to remove and transport the property to their warehouse for storage.
2. The Deputy executing the order will obtain a copy of the inventory completed by the moving and storage company.

3. In the event of seizing a vehicle or we take other property into our custody then we must complete our own inventory. (See “**Vehicles Seized/Towing & Impoundment**”, this manual)
 4. If a tow service is required and the plaintiff does not specify a specific towing agency, then the Civil Officer will contact the E-911 Center for the next available towing agency (on a rotating list) that maintains an impound yard to conduct the removal and storage of the vehicle.
- F. There are essentially three (3) methods of enforcing an Order of Seizure. They are as follows:
1. Seizure by Service of the order.
 - a. If the Order of Seizure does not include a break and enter provision, the court may grant a restraining order against the defendant and/or possessor. If the chattel is a vehicle, aircraft or vessel, the order will provide that it must not be removed from the state. If the chattel is some other form of personal property, the order will provide that it must not be removed from its location. The restraining order will also prohibit the transfer, sale, pledge, assignment or any other disposition of the property that would permit it to become subject to a security interest.
 2. Seizure of the property.
 - a. The deputy will serve a copy of the order and the above mentioned papers on the person from whose possession the chattel is to be seized.
 - b. The papers will be personally served on each defendant in the same manner as a summons unless the order states otherwise.
 - c. Seize the property named in the order. This property must be in a location where you have lawful authority to be or can gain authorization, i.e., get permission to enter premises to seize the property.
 - 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 a completed Property Receipt/Evidence Log & Tracking Form will accompany the property which will be secured in a temporary evidence locker at the LEC.

- e. Theft, destruction or other losses must be reported immediately. A proper investigation concerning all aspects of the theft, loss or destruction shall be conducted as follows:
 - i. If the theft, loss or destruction occurred as a result of an SCSO employee's conduct, an internal investigation must be conducted in accordance with SCSO Procedures.
 - ii. If the theft, loss or destruction did not occur as a result of an SCSO employee's conduct, an investigation will be conducted in accordance with the procedures for criminal/non-criminal investigations.

3. Seizure with a Break and Entry Provision.

- a. The Order may provide a clause for you to break into and search any place where the chattel might be found {CPLR 7102 (d) (1)}. Ensure there is reason to believe the property to be seized is in the premises when executing the order.
 - b. If the Order includes a Break and Enter clause, the plaintiff is responsible for securing a locksmith and coordinating the time to be at the address where the property is located. The deputy enforcing the order will determine when the locks may be changed.
 - c. Prior to executing any Break & Entry Order, the Chief Deputy or higher Command Personnel will be notified.
- G. If the Order of Seizure was granted with notice to the defendant, the seized property must be held in storage for at least ten (10) days. If after ten (10) days the defendant has not established a right to reclaim the property by a court order, the deputy will turn the property over to the plaintiff and have them sign a release form.
- H. If the Order of Seizure was granted without notice to the defendant, the plaintiff must make a motion for confirmation, within five (5) days after service of the Order of Seizure. If the motion is not made the Order of Seizure becomes void, no further seizures can be made and any seizure made must be vacated and chattels returned to the defendant.
- I. A third party may claim his right to the property, to the court. If this occurs we must be served prior to the expiration of the ten (10) days.

- J. A return of an Order of Seizure must be filed within twenty (20) days after delivery of property and must include all papers delivered to the Sheriff's Department. An affidavit of the action taken by the deputy must be filed with the return. If an Order of Seizure is executed and not all the property is recovered the Civil Division, at a later date, can re-execute under the same order any time before entry of a judgment, unless the court orders otherwise. (CPLR 7104)
- K. The deputy will complete an SJS report documenting enforcement of the Order of Seizure and procedures that were followed. The deputy will also obtain a case report number (CR#) from the E-911 Center for a "civil complaint."
 - 1. Copies of all reports and forms will be submitted to the Civil Officer for review before filing.