

PERSONAL PROPERTY

STANDARD NO(S):

NYSSACD # 68, 71, 110-111

DATE:

September 1, 2010

REFER TO:

David Smith

I. OBJECTIVE:

It is the objective of the Civil Division to establish procedures for enforcement of personal 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. Garnishee – A person who owes a debt to a judgment debtor or a person other than the judgment debtor who has property in his possession or custody which the judgment debtor has an interest.
3. 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.
4. Tangible Property – That which is capable of delivery.
5. Intangible Property – That which is not capable of delivery. (i.e. rents, a bank account)
6. 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. Obtain one (1) original and three (3) copies of the execution.

2. The executions must specify the date the judgment was entered, the court, the original amount and the amount still due of judgment, names of parties involved, last known address of debtor and the filing date of transcript if the judgment was entered in a court other than Supreme, County or Family. Transcription is not necessary if a lower court, within Seneca County, issues the execution and the execution is leviable only within the area serviced by that court. Also ensure that the execution is signed by an attorney or court clerk and has the attorneys or plaintiff's names and telephone number. Pro Se litigants, who are not attorney's, cannot issue or sign executions.
 - a. When jurisdiction is based on an Order of Attachment the execution must specifically describe the property and debts levied upon and direct that only such property be sold.
 - b. If a judgment is recovered for all or part of a mortgage debt, the execution must also describe the mortgaged property, specify the book and page where mortgaged property is recorded and direct that no part of the mortgaged property be levied upon or sold.
 - c. If judgment debtor is deceased a levy is not permitted without leave of the Surrogate Court. (CPLR §5208, 5230)
3. The Civil Division will time stamp receipt of the papers and obtain a computer generated file number for the execution and record that number on the papers.
4. Per 5232 (c) the execution must state whether the Notice to Debtor Form (CPLR §5222e) has been served within the preceding year.
 - a. Collect the appropriate fee plus mileage in advance for service.
5. An execution shall be returned to the court clerk from whom it was issued, within sixty (60) days after issuance, unless it has been served. The time may be extended, in writing, for an additional sixty (60) days, by the attorney for the judgment creditor or pro se. Additional sixty (60) day extensions may be granted in writing by the attorney or pro se, unless another execution against the same judgment debtor has been received by this office.
6. Fees for receiving the papers, mileage and anticipated expenses will be paid in advance.
 - a. An advanced fee for seizing and storage of property to be sold and any other additional Sheriff's expenses is \$500.00 for the first ten (10) days. If the attorney wishes to postpone the sale he must do so in writing and remit a check for the additional days of storage.

- b. If the plaintiff's attorney requests, the property may be left with the debtor or third party, with their permission, until the sale.
 - i. The attorney must send written authorization directing us not to seize property and holding the Sheriff and Deputies harmless.
 - ii. We also need written authorization from the party retaining the property agreeing to hold the Sheriff and his Deputies harmless from all liability.
 - c. When advanced fees are accepted, a receipt shall be written and an entry in the escrow tab of the Civil Process software that \$500.00 has been received for advance expenses.
 - d. If debtor requests to pay execution in full before the sale, check with Civil Officer for any additional expenses incurred before giving payoff amount.
7. Records shall be maintained according to written directive “**Records Management**”, of executions delivered, names of parties and debtor(s), date of issuance, return; the date and time delivered, amount due, amount of judgment and any unpaid fees.

C. Levy on Personal Property –

- 1. Levy by service: also known as constructive levy is service of a property execution on property or debts not capable of delivery.
 - a. Service must be on the garnishee, who must transfer any property or debt which becomes due to the Sheriff, within ninety (90) days of service.
 - i. A personal property execution issued out of a lower court, (Village or Town Court) that has not been transcribed, has a 90-day life, from the date of delivery to the Sheriff.
 - b. After transfer, or the expiration of ninety (90) days, whichever occurs first, any property coming into the custody of the garnishee shall not be subject to the levy.
 - c. If an attorney wants a levy by service only, they must make the request in writing.

- d. The levy is void after ninety (90) days from date of service unless a court order is received, or the creditor has started special proceedings.
2. Levy by Seizure: property capable of delivery. Enforcement of the property execution is accomplished by seizing the property into our custody.
- a. Service must be made in the same manner as a summons, except service may not be made by delivery to a person authorized to accept under §318 CPLR Designated Agent.
 - b. We must, without delay, serve a copy of the execution upon the person from whose possession or custody of the property was taken.
 - c. The property seized must be sold within the remainder of the current 60-day period. It is possible to seize property and not have sufficient time remaining to post the notice and conduct the sale. In this instance the clerk or attorney must be notified to provide the Sheriff with a written extension of the execution.
 - d. The plaintiff or plaintiff's attorney shall be responsible for:
 - i. Paying advance expenses to the Civil Division for moving and storage and employing sufficient personnel to move and inventory the seized property.
 - ii. With the approval of the Sheriff's Civil Division the plaintiff may choose a moving and storage company where we will exercise dominion and control of the property.
 - e. 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."
 - f. 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.
- g. Anytime a seizure is to be done a case report number (CR#) will be obtained from the E-911 Center and an SJS entry and report will be completed in connection with such seizure.
- h. The Chief Deputy or higher Command Authority will be notified prior to any seizure conducted by the SCSO.

D. Sale of Personal Property –

1. Personal property obtained pursuant to an execution shall be sold at public auction at a time, place, and as a unit, in lots, or combinations thereof, that will bring the highest price.
 - a. After serving the execution, the deputy, upon return to the office, will schedule the sale date and prepare the notice.
 - b. A notice of sale shall state it is an execution sale, the time, place, and property to be sold. An inventory must be attached with the notice.
 - c. At least six (6) days before the sale we must post the notice of sale in three (3) public places in the town where the sale is to be held. We may also notify anyone who may have an interest in the sale by mailing or delivering a copy of the notice of sale.
 - i. The court may direct immediate sale or other disposition, with or without notice, if urgency requires.
 - d. Property must be within view and under the control of the deputy conducting the sale. If it is physically impossible to have property within view, it will be sufficient if the Sheriff provides prospective bidders an opportunity to inspect the property at its site. If this is the case the Sheriff should receive a court order under CPLR 5240 authorizing this method to avoid liability.
 - e. At least two deputies shall be present at all sales.
2. No sale may be made to the Sheriff, Undersheriff or any employee of the SCSO.

3. A detailed record must be kept of all bids received on our bidders information form.
4. If property to be seized is considered material, which, by law may not be sold, the Sheriff may apply for court instructions on how to proceed. Notice must be given to the property owner of this application. The court may then determine whether the property should be sold and can order the appropriate disposition of the property, which may include destruction, if it cannot be sold.
5. Property, which has a lien on it, does not give the lien holder any rights to that property while in our custody. Once we have sold, returned or otherwise released the property the lien holder may enforce their rights.
6. If the property is not sold because of lack of bidders we will proceed one of two ways:
 - a. Postpone the sale.
 - i. Contact plaintiff's attorney with the status. If attorney requests you to reschedule the sale:
 1. Obtain additional fees.
 2. Proceed with scheduling and posting the sale.
 3. Notify potential buyers of the scheduled sale.
 - b. Return the execution unsatisfied
 1. The plaintiff's attorney is responsible for moving, storage and towing fees incurred until the property is sold or the execution is returned.
 - a. Advise the attorney he would be responsible for any additional fees while the property remains in storage. If the attorney asks us to return the execution, request a letter authorizing the return. We will then release the property to the judgment debtor. The judgment debtor will be responsible for any additional fees incurred after being notified of the release.
7. Procedures for the release of property are as follows:
 - a. Complete the Release of Property Form.

- b. Give copy of property release form to the buyer or debtor.
 - i. This copy must be presented to the custodian of the property for release.
- c. File original with the case file.

E. Distribution of Proceeds –

1. No distribution of proceeds shall be made until fifteen (15) days after service of the execution unless court ordered.
2. After deductions for expenses (fees, taxes, etc.), the proceeds shall be distributed to the judgment creditor and any excess shall be returned to the judgment debtor.
 - a. Priority is determined by the order in which the executions were delivered and time stamped for receipt by the Sheriff's Office. When two or more executions are issued, they shall be satisfied out of the proceeds by that priority.
 - b. Where personal property or debt has been ordered transferred or paid and that order is filed before the property is levied upon, the rights of the creditor who has the order are superior to those of the creditor entitled to the proceeds of the levy. (§5234 (c) CPLR)
 - c. Child support executions shall have priority over any other assignment, levy or process.

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 we receive a bankruptcy filing prior to levy, do not proceed. If received after levy depending upon the time of the 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 Civil Officer will make all returns as satisfied, part-satisfied or unsatisfied and will stamp all original papers as such.
2. The Civil Officer will complete all necessary forms and reports according to written directive “**Records Management**”.