

CPLR ARTICLE 52:
ENFORCEMENT OF MONEY JUDGMENTS.

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Judgments for Money are enforceable against money, specific property or real property which can be *assigned and transferred*, as well as against DEBT owed to a person against whom enforceable, and any legal CAUSE of ACTION which can be assigned or transferred.

In addition to CREDITORS and DEBTORS, there is a third class of parties which can potentially crop up in a judgment enforcement, that of GARNISHEES. A Garnishee is one who possesses money or property which a debtor owns or has interest in.

In the case of stock in a corporation - when there is no physical certificate extant - the corporation would be the proper garnishee (or the president/treasurer of an association, if the interest is derived therefrom). The garnishee of a deceased debtors estate is the executor/trustee/administer/fiduciary so responsible legally. If the debtor holds interest in a partnership, any *other* partner is a proper garnishee.

A Negotiable Instrument is considered property, and anyone who holds it for the debtor is a garnishee.

When a Debtor transfers PERSONAL property by sale or other means, the rights of the Creditor to such property are **superior** to those of the "transferee" who acquired it, only after an execution has been delivered to a sheriff. Unless the transferee acquired the property on "fair consideration" *before* the levy; or afterwards, without knowing of the levy.

A lien on property is good extends from the time when judgment is docketed until 10 years after the judgment roll had been filed; OR from the filing of levy on execution, until execution is "returned". No transfer on such property supercedes the Creditor's rights thereto, EXCEPT: a Judicial sale to satisfy a *previous* judgment; in satisfaction of the mortgage which funded the debtor's purchase price for the property; if Judgment was entered after the debtor's death; where the debtor is the State or municipal corporation; or where the judgment is against a personal representative of a decedant, and was entered in an action upon that person for actions made in such capacity.

Motion on notice can be made to extend the above time limit, when the judgment was STAYED from enforcement for a period, or where the sheriff needs additional time to complete a sale on an execution already delivered before the expiration.

The lien may also be released when the debtor has appealed the underlying judgment, and posted undertaking; such motion to be on notice to the creditor, sheriff, and surety.

PERSONAL PROPERTY EXEMPT FROM APPLICATION TO A MONEY JUDGMENT [EXCEPT IF THE JUDGMENT WAS FOR THE PURCHASE PRICE OF SUCH ITEM; OR WAS RECOVERED BY A DOMESTIC, LABORER, MECHANIC FOR WORK THEREUPON]:

1) ALL stoves in the debtor's dwelling, plus up to 60 days worth of fuel for same; 2) ONE sewing machine and accoutrements; 3) family bible & pictures, school books, and personal library UP TO \$50 in value; 4) pew or seat in place of worship; 5) domestic animals, and up to 60 days of food for same (not exceeding \$450 for both); 6) up to 60 days worth of family food, already purchased; 7) clothes, furniture, ONE fridge, ONE radio, ONE television; 8) tableware, crockery, and cooking utensils for family; 9) wedding ring; 10) watch, up to \$35; working tools, if necessary for employment (including related library), or farm team and up to 60 days food [nothing herein may exceed \$600]; 11) a legal CAUSE of ACTION for the taking of injuring of any property exempted herein; any money judgment and/or recovery thereupon is also exempt for ONE year after collection.

A Trust, for the benefit of the debtor, created by any other person; also an IRA/KEOGH created by the debtor (such deemed a "spendthrift" trust). However such trusts are NOT exempt from Qualified Domestic Relations Orders (QDROs) or for support/alimony/maintenance.

"Additions" to an IRA/KEOGH are also NOT exempt if made: fraudulently; or later than 90 days before claim interposed.

The first 90% of INCOME from a trust is exempt. However with regard to an IRA/KEOGH the Court can determine what is "reasonable" for the debtor's personal expenses, and exempt 100% of those monies, while any deemed unnecessary are NOT exempt.

The first 90% of income from labor or services is exempt, starting from 60 days prior to execution.

Support paid to a WIFE (not husband!) or child, pursuant to a MATRIMONIAL order, is also exempt income if such person be a debtor; provided however, if such order was by a New York State court, *that* court may determine what is reasonable and necessary for expenses, and disallow exemptions above and beyond.

The income and/or pension of a Non-commissioned Officer, private, or **musician** of the United State or New York State armed forces is similarly exempted from application against a money judgment, as is their sword, horse, medals, and uniform. However the above are NOT exempt from support orders on behalf of a child and/or present or former spouse.

90% of proceeds for the sale of milk delivered by a farm operating debtor to a dealer is exempt.

Security deposit for rent and/or utilities is exempt.

Medical/dental appliances necessary for mobility or "major life activities" are exempt.

A guide/hearing animal is exempt, as is ALL FOOD for same.

A life insurance policy is exempt.

100% of a scholarship tuition program account established by debtor is exempt, as well as 100% of the individual tuition account of a MINOR debtor who created it for his own benefit; and up to \$10,000.00 of such account created by a debtor for another beneficiary.

The first 10% of an award for compensatory damages to any convict is exempt.

The debtor's principal residence consisting of: land with dwelling; co-op; condo; or mobile home, is exempt up to a value no more than \$50,000.00 *above any liens*; EXCEPT: if the judgment is for the purchase price. This section also does not exempt such residence for sale due to unpaid taxes.

The principal residence exemption above continues after the death of the debtor until the death of the spouse AND the age of majority for the youngest child. However the exemption ceases if the residence is unoccupied, except if for less than a year because of the damage/destruction of the home.

If the residence is worth *more* than \$50K over any encumbrances, a lien for such excess may be established; but the property itself is not sold.

A family burial plot actually used, no more than 1/4 acre, and with no non-mortuaries structures is also exempt.

The State's property is exempt; however the State *can* be a Garnishee if holding a natural debtor's property.

Execution after the death of a debtor shall be on order of the Surrogates Court which issued letters, or another court if no letters issue within 18 months.

A lien on property expires no earlier than 2 years after the death of a debtor, if such date is later than the standard 10 years post roll filing.

Any Court which can hear Special Proceeding to enforce the judgement, may also hold contempt proceedings for failure to comply with enforcement procedures. Such court may also confer immunity from a criminal action upon a witness in such proceeding, on at least 24 hours' notice to the interested District Attorney.

If judgment entered in a City court, and the debtor resides or works in that county, the Special Proceeding shall be in that City court, or the County Court of that county [does NOT apply to NYC]. If by a District court, and the debtor resides or works in that county, the Special Proceeding shall be in that District court. If judgment entered in a New York City civil court, and the debtor resides or works in NYC, the Special Proceeding shall be in that civil court. If from any other court, such proceeding may be brought in the Supreme or County court of any county where the debtor resides or works; else if no such county, where the debtor can be *served*, or as a last resort, in the county where judgment entered. If a court where the proceeding *shall* be brought is not in session, it *may* be brought in the Supreme/County court of any county where otherwise permissible, or an adjoining county.

RESTRAINING NOTICE: is issued by the Clerk, or the creditor's attorney, or [in a support matter] by the Support Collection Unit (SCU). It shall NOT issue to an employer of other salary payer. It is served in the manner of personal delivery on a summons, OR by registered or certified mail, return receipt requested. SCU may serve by regular mail. Service may also be by electronic means if so authorized by written consent of the party to be served; in which case no signature or copy as specified below is required.

A Restraining Notice shall specify ALL parties to the underlying action; the Court of judgment entry, and date entered; the amount of the judgment, and any monies due outstanding. The notice shall bear the original OR a copy of the Clerk/Atty who issues it. A restraining notice issued by SCU bears the name of that SCU (unless served electronically). Disobedience of such a notice is punishable as contempt of court.

If to be served on a Department of the State, shall also be served on the State Department of Audit and Control in Albany, by any Sheriff, or by registered or certified mail, return receipt requested. If upon the State with *no* specific department, then solely to Audit and Control.

A restraining notice prohibits the transfer of any property or interest of the debtor's up to twice the amount of the judgment, held by the garnishee. The notice is effective for 1 year, unless the judgment be first satisfied or vacated. The creditor is liable for any damages which a garnishee suffers by complying with this notice. In order to serve a second notice upon the same garnishee for the same debt, leave of the Court is required.

If the DEBTOR had not been noticed of the possible issuance of a restraining notice within 1 year beforehand, then he/she must receive such notice, along with the restraint itself, within 4 days of service upon the garnishee. Service by personal delivery, OR [if a natural debtor] by **1st class** mail to the home. If home address unknown, to work, in a sealed envelope marked "personal & confidential" and not revealing that it concerns a debt, else to any other known address.

The Notice to Debtor shall specify the following as exempt from application to the judgment: SSI; social security; public assistance; alimony or child support; unemployment benefits; disability; workers' comp; pension, veterans' benefits.

Subpoenas, Subpoenas Duces Tecum, and Information Subpoenas to compel disclosure are also enforcement mechanisms. An Information Subpoena demands written answers to specific questions. An original Information Subpoena plus one copy, and a self-addressed return envelope with pre-paid postage shall be served by registered or certified mail, return receipt requested. Answers shall be provided within 7 days, sent back together with the *original* subpoena. The subpoena must be certified is served on any person other than the debtor, and are null and void if not so certified. Motions to compel compliance therewith, or to quash, shall be made to the Court which entered the judgment. No party served with an information subpoena - nor a debtor with regard to any other - is entitled to fees. Non-debtors served with Subpoenas or Subpoenas Duces Tecum are entitled to standard fees.

A Deposition may be taken, on at least 10 days notice, and shall be during normal business hours. Witnesses shall be under oath; and the proceedings recorded or transcribed upon request of the creditor conducting such deposition. Leave of the Court is required for a second examination of a debtor, within 1 year of such deposition.

Special Proceedings to order transfer of money held by garnishee shall also be on notice to the debtor, who can then intervene with permission of the Court; as well as any adverse claimant. No costs shall be awarded against the garnishee if such person did NOT dispute the debtor's ownership or interest therein.

If a debtor impedes recovery on a judgment by providing services without receiving payment, the Court may order the debtor to make installment payments.

A Court may appoint a RECEIVER of the debtor's property, to administer it and provide income to the creditor; such receiver entitled to compensation not more than 5% of the proceeds.

The COURT may also restrain a debtor after a verdict, but before judgment enters.

An EXECUTION to a sheriff shall specify: the date of judgment; Court where entered; amount therefor and whatsoever due outstanding, parties for or against; as well as the date of transcript filed with County Court (save on Supreme/County/Family court judgments). EXECUTIONS may be issued by the Supreme/County/Family court in county where first judgment docketed, by the Clerk or creditor's Attorney as Officer of the Court, or by SCU for support. The Sheriff shall "return" the execution to the Clerk or SCU (but not the Attorney) within 60 days; executions may be extended by written direction of the Attorney or SCU (but not Clerk) for additional periods not more than 60 days each.

INCOME EXECUTIONS shall contain the name and address of garnishee, as well as the amount owed, frequency of payment, and amount of each installment thereupon. Income Executions are served to the DEBTOR within 20 days of delivery to the sheriff. If debtor does not pay installment voluntarily within 20 days thereafter, or cannot be served, then execution served on garnishee in the same manner as personal delivery for a summons OR by certified mail (return receipt requested); but NOT to an agent if designated by any other procedure than CPLR section 318.

Income Executions shall not withhold more than 10% of income. In any given week where income is less than 30 times the Federal Minimum Hourly Wage, no income shall be withheld. Withholding cannot exceed 25% of debtor's "disposable" income (wages or pension less any required withholding). If debtor already paying support, withholding cannot increase total deductions beyond such 25% ceiling.

Income Execution is null and void upon the debtor's termination of employment, unless reinstated within 90 days. An Income Execution on the State as employer is effective after 15 days, and the State is entitled to a \$2 processing fee. Where multiple executions, priority assigned to whichever first delivered to sheriff; if execution was returned by sheriff, and then re-delivered to another appropriate sheriff within 20 days thereafter, priority remains from the date **first** delivered. A sheriff receiving monies from an execution shall account for same, and pay out to creditor at least every 90 days.

CHILD SUPPORT EXECUTIONS take preference over other judgments; if multiple child support executions, payment shall be proportionally made.

A Sheriff's levy upon the **interest** in personal property not capable of delivery of a debtor, held by a garnishee, expires in 90 days (unless Court directs otherwise).

A sheriff can also seize property capable of delivery.

The debtor or OBLIGOR must be noticed of any execution herein within 1 year before levy, or within 4 days after, by personal delivery OR **1st class** mail.

An OBLIGOR as defined herein covers defaults on alimony/support.

A Public Auction of debtor's personal property shall be on at least 6 days notice, posted in at least 3 public places. In NYC, notice may be by publishing in a newspaper printed daily & Sunday, on newsstands the night before, and with a circulation of at least 300,000. No distribution of proceeds from such sale shall be until 15 days after service of the execution upon the debtor, EXCEPT: by order of the Court.

Sheriff can levy on REAL PROPERTY 10 years after filing of judgment roll - NOT applicable where execution for judgment on mortgage.

Printed notices of the public auction shall be posted at least 56 days before auction, in at least 3 public places of city where property located (as well as city where

auction to be held, if other), at least once in each of 4 consecutive periods of 14 days each. Auction shall be between the 56th and 63rd day of first posting. At least 45 days prior to sale, the creditor shall provide the Sheriff with the debtor's name & address, as well as those for any other creditor having a lien on the property, and any other person with legal interest. The sheriff shall serve all such parties within 30 days before. Such notice to be also published in a newspaper at least once in each of 4 consecutive periods of 14 days. Willfully defacing or removing posted notice *before* auction date is punishable as contempt of court.

If the auction is then postponed, notice must be given to: debtor; any individuals who appeared at the original date noticed for auction; any person who requests such notice in writing at least 5 days prior to date originally noticed.

Upon sale, sheriff shall convey deed and proof of required notice to the purchaser within 10 days.

For purposes of support, income includes Workers' comp, disability, and unemployment benefits; but NOT SSI or public assistance. An Income Execution by SCU is effective no later than 1st pay period after 14 days from service; employer to remit money within 7 days of withholding. If income execution by another State's SCU, the law of the State where debtor is "principally employed" shall govern amounts. An objection by a debtor for "mistake of fact" shall be made to SCU or Court within 15 days after service of execution, and shall be determined within 45 days of such objection.

Where a debtor is supporting another spouse and/or child(ren), deductions for child support shall not be more than 50% of disposable income; except 55% allowed to pay down arrears accrued at least 12 weeks prior. Where no other dependants, amounts limited to 60% and 65% respectively.

An employer's deductions hereupon do NOT satisfy the child support obligation (the debtor is still liable if monies not remitted).

An employer who fails to comply with such execution may be liable for interest of sums thereupon, as well as attorney's fees related to the prosecution of the action. Family Court may also impose a civil penalty of \$500 for first such offense, and \$1,000.00 for any subsequent.

An employer is also liable for medical expenses for failure to enroll dependants in a health insurance plan if so mandated by execution/order.

A debtor's share of the premiums for health insurance are included with the support obligation when considering limits on deduction.

The Court may grant an Income Deduction Order to a creditor for "good cause" where income execution insufficient to ensure compliance. Proof of default is prima facie conclusive "Good cause" unless debtor can prove an inability to pay. Any Order of

Support for a creditor NOT on public assistance and NOT receiving SCU services (and on any out-State registered order) SHALL have an IDO.

The same general guidelines as regard income executions also apply to IDOs, EXCEPT: no process on debtor is required before relief can be granted; and remission of monies is within **10** days, not 7.

A Court can also issue an arrest warrant for a debtor, and thereafter require undertaking.

For ANY employer discriminating against a debtor with an income execution (either by termination of employment, or unreasonable failure to hire) is punishable by a civil penalty of \$500 for first such offense, and \$1,000.00 for any subsequent, payable to the CREDITOR!

The employee may also commence an action within 90 days for damages not exceeding 6 weeks wages.