

Thoughts and Tips on Executing Judgments Against Real Property

Successfully enforcing a judgment against real property in Washington state is largely a matter of paying close attention to RCW Title 6, Chapter 17 and the specific steps and preliminaries required. Strict compliance with the statutory requirements is necessary, form prevails over substance, and many traps for the unwary exist. The law requires a judgment creditor to first pursue personal property assets if sufficient amounts exist to satisfy the judgment. Due to space limitations, this article can only address the major considerations in a summary manner.

Predicate Judgment

Execution against the real property of a judgment debtor is commenced by the issuance of a court order entitled Writ of Execution to the sheriff of a particular county directing the seizure and sale of the property of the judgment debtor not exempt from execution. Only the Superior Courts may issue writs of execution against real property, making it necessary to transfer a District Court judgment to the Superior Court if a real property execution is desired. A judgment is effective for an initial ten-year period and can be extended by application prior to expiration for an additional ten years. One trap for the unwary is that every component part of the execution must be completed prior to expiration of the judgment, including the levy (seizure by the sheriff), the sale, and the sale confirmation. Another practice tip is to verify that the judgment is properly recorded in the Superior Court Clerk's judgment docket prior to requesting issuance of the writ of execution. It is not uncommon for a lawyer to find that a pleading entitled "Judgment" signed by the court and filed with the clerk was not entered in the judgment docket because of a missing or incomplete judgment summary or some other technical deficiency. No writ may issue until after five court days following entry of the judgment. To obtain a judgment lien on property qualifying as a homestead, it is necessary to record the judgment with the county auditor.

Due Diligence Affidavit

Prior to requesting issuance of the writ of execution, the judgment creditor must file an affidavit stating that due diligence has been exercised to ascertain if the judgment debtor has sufficient non-exempt personal property to satisfy the judgment, identifying the items and location of personal property, whether the personal property is exempt, and whether any real property is being occupied or claimed as a homestead. The "due diligence" required of the judgment creditor includes physically inspecting property, interviewing occupants and neighbors, and searching the county real property records. The most common way for judgment creditors to satisfy the due diligence requirement is to examine the judgment debtor in supplemental proceedings concerning personal property and real property assets, and exemptions.

In addition to filing with the court, the judgment creditor must mail a copy of the due diligence affidavit to the debtor, allowing the debtor to challenge its contentions. Once the writ of execution is issued by the clerk, the judgment creditor takes the writ of execution to the sheriff for service on the judgment debtor with copies of specified exemption statutes. Service is either by personal service or by regular and certified mail.

Execution May Issue Only From The Court Where Judgment Was Originally Entered

Practice Tip: A common mistake made by counsel for judgment creditors is to file a transcript of a judgment entered in another county and then have the new court clerk issue execution writs. Execution can lawfully issue only from the Superior Court in which the judgment was entered, and the Superior Court issues writs of execution to the sheriff of the county where the real or personal property is located. Court clerks will not always pick up on the fact that the writ of execution is sought on a judgment that was transcribed from a different county.

Pre-Writ of Execution Communications With the Sheriff's Civil Division

Although generally similar in approach, each sheriff's office has its own requirements for levying writs of execution and conducting sheriff's sales. Counsel contemplating pursuing a writ of execution on real property should contact the civil division of the sheriff's office in the county where the real property is located early in the process in order to learn the particular requirements of that office. Many sheriffs post their proceedings online. The sheriff will likely require multiple copies of the writ and judgment, a letter of instructions detailing the judgment debtor's personal information, legal description, tax ID number, the applicable redemption period pursuant to RCW 6.23.020, and instructions on access to the property. In addition, each sheriff will have its own execution fee and mileage charge to the property for posting of the notice of sale and for service on the judgment debtor if at a different address. The sheriff will then prepare a notice of sale and arrange publication in a local paper of record after the sheriff determines the sale date.

Economic Considerations

When deciding whether to execute on real property, the judgment creditor must take into consideration the market value of the judgment debtor's interest in the real property – the purchaser at the execution sale acquires only the interest of the judgment debtor. Unless the judgment debtor has sufficient equity in excess of the homestead exemption amount of \$125,000, the judgment creditor would not proceed with an execution sale, especially considering the costs of sale, which are added to the judgment amount. Most sheriffs will require pre-payment of all execution fees.

Litigation Guaranty – Title Report

A judgment creditor executing on real property will typically obtain a title report known as a litigation guaranty prior to commencement of the execution sale in order to identify any superior lien interests and tax liens. Although junior lienholders are not entitled to any notice beyond the standard recording posting and publication, the IRS is entitled to special notice even if the tax lien is junior to the judgment lien.

Priority Considerations

The lien created by the filing of a judgment in the county where the real property is located is entitled to priority over all subsequently-filed encumbrances. However, prior unrecorded claims or interests in the property take precedence over the lien of a

judgment creditor purchasing at its own sheriff's sale because the judgment creditor does not qualify as a bona fide purchaser. For this reason, some judgment creditors arrange for a third party to purchase at the execution sale and then subsequently purchase from the third party.

Stopping The Execution Sale

The judgment debtor has the ability under the execution statute to stop the execution sale by paying the amount of the judgment plus the costs of execution or by posting a bond of sufficient amount to satisfy the judgment plus costs. A judgment creditor may also stop an execution sale by filing a supersedeas bond pending an appeal or by obtaining a stay from the trial court pursuant to Civil Rule 62(b). In addition, RCW 6.17.040 provides a mechanism for a judgment debtor to stay the execution of a judgment, depending on the size of the judgment, in order to retain the property while paying off the judgment. This option requires the filing of a bond for double the amount of the judgment and costs, reducing its attractiveness. Similarly, an adverse claimant to the property may prevent the levy and sale on the property by giving the sheriff a sufficient bond pursuant to RCW 6.17.180. Finally, on any irregular or improperly issued writs of execution, the judgment debtor or other claimants may move to quash the writ or enjoin the sale.

Sheriff Sale Mechanics

If the real property consists of several lots, they must be sold together or separately in the manner most likely to bring the highest price. Most sheriffs hold execution sales on Friday mornings outside the courthouse entrance. Prior to the sale, the sheriff posts the notice of sale for at least four weeks prior to the sale at three public places in the county, one of which is at the courthouse entrance, and publishes notice once a week for four weeks in a newspaper of record nearest to the place of sale. In addition, not less than thirty days prior to the sale, the judgment creditor must serve a copy of a notice meeting the requirements of RCW 6.21.040 on the judgment debtor by personal service or by regular and certified mail, and mail a copy of the notice to the judgment debtor's attorney of record. The judgment creditor must also file an affidavit declaring that all notices required by the statute have been provided.

Most judgment creditors submit a bid letter to the sheriff prior to the sale date specifying the amount that the judgment creditor wishes to bid. The judgment creditor can credit bid up to the total amount of the outstanding judgment, and can additionally bid additional money to compete for the winning bid. If the judgment creditor wishes to bid more than the amount in its bid letter, the judgment creditor must attend the sale. The sheriff conducting the sale will typically give the successful bidder a reasonable amount of time, one to two hours, to produce the purchase price, typically in the form of a cashier's check.

Confirmation Of Sale

Following the sale, the sheriff mails the notice of filing of the return of sale, and twenty days after the mailing the judgment creditor or successful bidder may move for an order confirming the sale. If objections to the confirmation motion are filed, the

court may refuse to confirm the sale if substantial irregularities in the sale caused probable injury to the party objecting.

Redemption

Pursuant to RCW 6.23.010, the judgment debtor, successors-in-interest, and creditors having liens that were foreclosed by the sheriff's sale have the right to redeem the property by paying the bid amount plus interest, taxes, etc., at any time within one year from the sale date (different redemption periods apply to farming property where the complaint waived any right to a deficiency judgment). Other redemptioners have the lesser of one year or sixty days from the last redemption by another redemptioner in which to redeem, allowing for a cascade of redemptions. The purchaser at the sheriff's sale or a redemptioner must provide notice of the expiration of the redemption period at least forty and not more than sixty days prior to expiration of the redemption period, and failure to provide such a notice to the judgment debtor and property occupant extends the redemption period for an additional six months.

The details of the redemption amount and other complications are beyond the scope of this article and counsel is well-advised to carefully consult the redemption statute, RCW 6.23.010 *et seq.*, in detail prior to proceeding.

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