

Rule 69. Execution

(a) *Issuance.* All executions shall issue from the Justice of the Peace Court on forms prescribed by the Court.

(b) *Returns.* All writs of execution shall bear a return date thereon. A constable shall return a writ of execution unless otherwise provided by statute by the date of the return specified upon the writ or upon the satisfaction by the defendant of the claim whichever shall first occur. All monies received by a constable pursuant to a writ of execution shall be forthwith paid over by the constable to the clerk.

~~Disbursements of partial payments by the clerk shall not be made until the return day specified on the writ.~~ Except pursuant to constable's sales, payments pursuant to writs that have been satisfied in full shall be disbursed upon the return of the writ. Disbursements of the proceeds of a constable's sale shall be made in accordance with subsection (d)(D) of this Rule. The return of the constable shall:

- (1) be in writing, upon the writ,
- (2) be signed by the constable, and
- (3) state what action the constable has taken in the execution of the writ.

(c) *Money Judgments; Methods of Collection.* The methods for collecting a money judgment are: 1) attachment, by which assets or money in the possession of the judgment debtor are seized by levy and may be sold at constable's sale to collect the debt; 2) garnishment of property, by which assets belonging to the judgment debtor, but in the possession of a third party, are held for either constable's sale or distribution to the judgment creditor and 3) garnishment of wages, by which wages are held by the employer for distribution to the judgment creditor. Garnishment of wages must be attempted as the first method of collection, subject to the provisions of subsection (1) below. If garnishment of wages is unavailable or unsuccessful, the lienholder may proceed with attachment and/or garnishment of property.

(1) Garnishment of Wages. Garnishment of wages must be attempted as the first method of collection, unless waived by the Court. Waiver shall be available only when the lienholder files with the execution request documentation of unsuccessful attempts to identify employment of the judgment debtor or the existence of existing liens or garnishment upon the judgment debtor's wages.

(A) An initial attempt to serve a garnishment may be made by 1st class mail. If a timely answer is not received, service shall be made in compliance with Rule 5(b).

(B) Appearance of garnishee. A garnishee duly summoned shall file an answer with the Court within 20 days after service of process. The answer shall specify:

- (1) whether or not the judgment debtor is employed by the garnishee;
- (2) if so, the rate or basis of pay;
- (3) any reasons for failing to garnish the defendant's wages, including other attachments against the employee's wages.

Objections may be filed within 10 days of receipt of the answer. Amounts withheld from the judgment debtor's wages shall be calculated in accordance with directions served on the garnishee by the Court and shall be sent directly to the judgment creditor or the judgment creditor's legal representative.

(C) Failure of garnishee to withhold wages. If the garnishee fails to answer, or having answered and indicated that wages would be withheld, fails to do so, the Court, on motion, may enter personal judgment against the garnishee in favor of the judgment creditor in an amount equal to the value of the property of the judgment debtor in garnishee's custody or possession, or the amount of the judgment creditor's judgment, whichever is less.

~~(2)~~ *Attachments.* (A) *Service.* Attachments under this subsection shall be served by the constable in compliance with Rule 5(b).

(B) *Date of return.* Writs of attachment (levies) shall be returned by the constable promptly. All writs of attachment shall bear a return date thereon. Levies shall be completed within 30 days of the date of the delivery of the execution to the constable.

(C) *Procedure.* Upon receiving the writ of execution, the constable shall record upon it the precise time of delivery. Within 30 days of receipt, the constable shall levy upon sufficient property to satisfy the judgment and costs and any known liens and shall inventory and appraise the levied goods. If the constable is refused entry to make the levy, the constable shall note this on the return. The Court shall then notify the judgment creditor that entry to make a levy has been refused. Upon motion of the judgment creditor, the Court may hold a show cause hearing, with notice of the hearing provided to all parties. If the judgment debtor fails to appear at the hearing, a *capias* should be issued and the judgment debtor charged with contempt of court. If the judgment debtor appears at the hearing, the Court may issue a new writ of *fi. fa.* and schedule a time for the levy to be made, or take other appropriate action. If the judgment debtor fails to appear or refuses the constable entry to make the levy on the new writ of *fi. fa.*, a *capias* should issue and the judgment debtor charged with contempt of court.

(D) *Attachments in actions for distress for rent.* Upon a finding of compliance with the requirements of 25 Del.C. Ch. 63, the Court shall promptly issue an order requiring plaintiff to file a cash bond or a bond with surety in such amount and in such form as the Court shall determine. Once Plaintiff has filed said bond, the Court shall issue an order to a constable or sheriff of that county to levy on all goods on the leased premises. A copy of the claims of distress and order of levy shall be served upon each tenant on the leased premises. The constable shall make the levy between 8:00 a.m. and 8:00 p.m. and shall provide a copy to each tenant found on the premises. The goods levied upon shall remain on the leased premises unless, upon application to the Court, the Court permits the removal, sale, or both, in whole or in part, of the levied goods as necessary to protect either party. Upon the filing of a bond with surety, the Court may release from the levy and return the property of the tenant. Such bond shall be in an amount not exceeding the fair market value of the goods levied as determined by the Court or the amount of rent in arrears plus two (2) months' rent, whichever is less. The Court may order the constable to enter the premises forcibly if entry cannot otherwise be gained and the plaintiff has shown

under oath or affirmation that there is a need for protective measures because the tenant may abscond or remove the goods. When entry is gained forcibly and if no tenant is found on the premises, a copy of the claim, order, and inventory shall be affixed on a prominent place on the interior of the leased premises. The constable shall thereafter contact the tenant if the tenant's whereabouts are known.

~~(32) Garnishment of assets. (A) Service. An initial attempt to serve a garnishment may be made by 1st class mail. If a timely answer is not received, service shall be made in compliance with Rule 4(f).~~

~~(B) Appearance of garnishee. A garnishee duly summoned shall file an answer with the Court within 20 days after service of process. The answer shall specify what goods, chattels, rights, credits, money or effects of a judgment debtor, if any, the garnishee has in its possession or custody. Within 10 days after receipt of such answer, the judgment creditor may file objections. If no objections are filed, a delivery to the constable of the property set forth in the answer by the garnishee, or so much of it as shall satisfy the judgment creditor's demand, shall be a complete discharge of the garnishee in the proceedings, and the constable shall make a supplemental return on the writ showing an inventory and appraisal of the property which has been delivered to the constable by the garnishee and shall hold such property subject to the order of the Court.~~

~~(C) Disposition of property. If the property held by the garnishee is goods, upon order of the Court, the constable shall sell as much of the goods at constable's sale as needed to satisfy the judgment and costs in accordance with subsection (d). If the property returned by the garnishee is money, the constable shall return it to the court.~~

~~(D) Failure of garnishee to deliver the property. If the garnishee does not deliver the property to the constable within five (5) days after the expiration of the 10 day period for plaintiff's objections, if any, or, if the garnishee fails to answer, the Court, on motion, may enter personal judgment against the garnishee in favor of the judgment creditor in an amount equal to the value of the property of the judgment debtor in garnishee's custody or possession, or the amount of the judgment creditor's judgment, whichever is less.~~

~~(3) Garnishment of Wages (A) An initial attempt to serve a garnishment may be made by 1st class mail. If a timely answer is not received, service shall be made in compliance with Rule 5(b).~~

~~(B) Appearance of garnishee. A garnishee duly summoned shall file an answer with the Court within 20 days after service of process. The answer shall specify:~~

~~(1) whether or not the judgment debtor is employed by the garnishee;~~

~~(2) if so, the rate of basis of pay;~~

~~(3) any reasons for failing to garnish the defendant's wages, including other attachments against the employee's wages.~~

~~Objections may be filed within 10 days of receipt of the answer. Amounts withheld from the judgment debtor's wages shall be calculated in accordance with direction served on the garnishee by the Court and shall be sent directly to the judgment creditor or the judgment creditor's legal representative.~~

~~(C) Failure of garnishee to withhold wages. If the garnishee fails to answer, or having answered and indicated that wages would be withheld, fails to do so, the Court, on motion, may enter personal judgment against the garnishee in favor of the judgment creditor in an amount equal to the value of the property of the judgment debtor in garnishee's custody of possession, or the amount of the judgment creditor's judgment, whichever is less.~~

(d) Levy Procedure. Pursuant to 10 Del.C. 9553, constables shall inventory and appraise goods and chattels seized by virtue of execution. No levy shall be conducted for a judgment amount less than \$500. A copy of the inventory with value estimates shall be left with or mailed to the creditor prior to the constable sale. The following items shall not be levied upon:

- (1) Items whose value exceeds more than 20% of the total judgment amount
- (2) Items in which the title is held jointly by two or more persons

The levy process shall cease when the total value of items levied upon equals or exceeds the judgment amount by no more than 20%.

(e) *Constable's Sales.* (A) *Lien Search or Value Report.* Prior to execution, plaintiff shall file a lien search, as may be required by the Court. In the instance of a manufactured home, an NADA Value Report shall be submitted to the Court with a levy request by the judgment creditor.

(B) *Scheduling of constable's sales.* Except in constable's sales held for distress for rent, a constable's sale shall be held upon the request of the plaintiff following notification that the levy has been completed. The constable's sale should be held within 45 days of the date of the request. In actions for distress for rent, the constable's sale should be held at least 10 days from the date of the issuance of a final order of sale by the Court and not more than 60 days from the date of the levy.

(C) *Notice of constable's sales.* No constable's sale shall be held unless at least 10 days before the date of the sale:

- 1) the constable ensures that a copy of the notice is delivered or mailed to:
 - a) every person whose goods are to be sold,
 - b) the sheriff of the county,
 - c) each plaintiff in the execution and any plaintiff in any other execution against the same defendant whose execution is in the hands of the constable, and
 - d) the county tax collecting authority;
- 2) the Court mails a copy of the notice to all lienholders identified by the judgment creditor,
- 3) the constable posts the advertisement sale in 5 of the most public places in the neighborhood;
- 4) if the Court knows of a federal tax lien on nonperishable property, the Court shall give notice to the Internal Revenue Service in writing by registered or certified mail not less than 25 days prior to the date of the sale on a form prescribed by the Court. If the property to be sold is perishable, the Court shall give such notice to the Internal Revenue Service as soon as possible prior to the sale; and

5) the notice shall contain:

- 1) the date, time and location of the sale and
- 2) a statement that anyone claiming an interest in the property to be sold must file a motion requesting a hearing concerning their rights in the distribution of the proceeds. Such motion must be received by the Court prior to or within 15 days following the date of the sale.

~~(D) Constable Sale Procedure: After inventory and appraisal, minimum bids shall be established under court policy.~~ The Court shall establish constable sale procedure, including the imposition of minimum bids by Court policy.

(E) Distribution of the proceeds of the constable's sale. The constable shall submit the proceeds of the sale to the Court with his or her return. The lienholder shall petition the court requesting payment of the sales proceeds. No distribution of the proceeds shall be made for 15 days following receipt of the petition requesting payment of the sales proceeds. Thereafter, the Court shall distribute the proceeds of any sale of nonperishable goods, or of perishable goods upon which there is no federal tax lien, to the execution creditor as soon as practicable following the 15 day waiting period unless a lienholder has filed a motion regarding the distribution of the proceeds of the sale. If a lienholder has filed a motion, the Court shall schedule a hearing to determine how the proceeds shall be distributed.

If the sale is of perishable goods and the Court knows there is a federal tax lien on the defendant's property, the Court shall not distribute the proceeds for 30 days following the sale.

If any proceeds remain after all claims have been satisfied, they shall be returned to the debtor.

(F) Setting aside a constable's sale. Upon motion of any party in interest, before distribution of the proceeds, the Court may set aside the constable's sale upon the finding of a defect or irregularity in the process or mode of conducting the sale or for any other sufficient reason and enter any other order which may be just and proper under the circumstances.

(e) Replevin. An execution in a replevin action returns the goods which were wrongfully withheld or, if unavailable or so ordered by the court, the value of the goods.

(1) Issuance. Writs of replevin shall issue from the Justice of the Peace Court to the constable on forms prescribed by the Court.

(2) Procedure. When the constable receives the writ of replevin, the constable shall make arrangements with the plaintiff and defendant for the goods to be turned over to the plaintiff. If the defendant refuses to turn over the goods or the goods are not in substantially the same condition as they were when they were taken, or the defendant has disposed of the goods, the plaintiff may request a rule to show cause hearing. The Court will determine the appropriate remedy which may include a monetary judgment or a finding of contempt.

(f) Summary possession. An execution in a summary possession action gives legal possession of the rental unit to the prevailing party.

(1) *Issuance of writ.* A writ of possession may not issue for 10 days following judgment. A plaintiff shall request the writ of possession within 30 days of judgment unless another time period is agreed to by both parties and approved by the Court or a hearing is held on a motion to revive the writ.

(2) *Service.* Writs of possession shall be served in the same manner as provided for service of process in summary possession actions.

(3) *Procedure.* Writs of possession shall be executed in accordance with statute.

(4) *Return.* Writs of possession shall be returned within 15 days of issuance.

(g) *Garagekeeper's Liens.*

(1) Persons entitled to liens pursuant to 25 Del. C. Ch. 39 may apply to the Court for a judgment and permission to conduct a garagekeeper's sale in accordance with the forms prescribed by the Court. In addition to the application requirements of 25 Del. C. 3903(b), the application shall include a copy of the garagekeeper's Form 50, when he/she is filing as an artificial entity, and the following documents related to the property which is the subject of the sale application:

(a) any work order(s), including tow slip(s) and repair invoice(s);

(b) any demand letter(s) made to the registered owner and any other lienholder of the property, including the letter(s) indicating that the garagekeeper has possession of the property;

(c) an affidavit or other proof of mailing of the demand letter(s);

(d) a lien certificate obtained from Delaware Division of Motor Vehicles, dated no more than 120 days prior to filing with the Court, for each vehicle exhibiting a Delaware tag or no tag;

(e) a lien certificate or statement of ownership from the Division of Motor Vehicles from the corresponding state, dated no more than 120 days prior to filing with the Court, for each vehicle from a state other than Delaware;

(f) if the property is not a motor vehicle, documentation on ownership, title and lien from the appropriate regulatory agency; and

(g) a report from the Delaware State Police Auto Theft Unit, dated no more than 120 days prior to filing with the Court, if the property is a motor vehicle.

(2) The contents of the notice(s) of the garagekeeper's lien sale mailed to the registered owner and any other lienholder of the property is prescribed by 25 Del. C. § 3903(c) and shall consist of copies of the application to conduct a lien sale, the garagekeeper's notice of sale, and the answer to garagekeeper's claim.

(3) If the claim is contested, the Court shall determine the amount of indebtedness and the right to sale by the garagekeeper.

(4) If a claim for storing or safekeeping any motor vehicle towed at the request of a party other than the owner is contested by the title holder of record or by another lienholder whose lien the Court finds to be valid, the garagekeeper shall be required to prove that the notice requirements of 25 Del. C. § 3907(b) were met. If the garagekeeper fails to so prove, the garagekeeper may be permitted to sell the vehicle, but shall be required to return all proceeds of the sale to the Court for distribution in accordance with the priority determined by the Court.

(5) If the notice to the registered owner, or any other lienholder of the property, which is not a motor vehicle, is returned to the Court marked as “Unclaimed” or “Refused” by the post office, the Court shall re-send the notice by 1st class mail with certificate of mailing. If the garagekeeper sends said additional notice, the garagekeeper shall provide to the Court an affidavit or other proof of such mailing.

(6) If the notice to the registered owner, or any other lienholder of the property is returned to the Court with notification from the post office that the notice is undeliverable, and the garagekeeper cannot subsequently locate the party, the garagekeeper shall file an additional affidavit with the Court outlining the subsequent steps taken to secure a good address that have been unsuccessful.

(7) If the sale date must be changed from the original sale date listed in the notice(s) to the registered owner and any other lienholder of the property, the interested party or parties shall be re-noticed of the new sale date. This notice shall consist of the application to conduct a lien sale reflecting the new sale date, the garagekeeper's notice of sale reflecting the new sale date, and the answer to garagekeeper's claim.

(8) In order to obtain the authorization to conduct a lien sale, the garagekeeper, upon completion of the notice of sale requirements of 25 Del. C. § 39059(a), shall file a copy of the handbill, along with a notarized list of the posting locations and the original newspaper advertisement with the affidavit from the newspaper referencing the advertisement, with the Court at least 5 days prior to the sale date.

(9) If the claim is not contested or if the garagekeeper is otherwise found to have a right to sale (other than as permitted under subsection (g)(3) of this Rule,) the proceeds of the sale shall be applied to discharge of the garagekeeper's lien and the cost of keeping and selling the property. The balance, if any, of the proceeds of the sale shall be deposited not later than 10 days from the date of the sale with the Court to be applied by the Court to the payment of any lien or security interest to which the property may be subject in the order of their priority, with any remaining proceeds to be paid to the owner or owners of the property sold, but in case such owner or owners cannot be found, such balance shall be turned over to the State Treasurer not later than 60 days from the date of the sale.

(h) *Stay of execution.* Execution process shall be stayed in accordance with Rule 62(a) and may also be stayed either upon direction by the plaintiff in writing, as is provided by statute, or upon the Court's own motion.