

## CHAPTER 2016-33

### Committee Substitute for Senate Bill No. 1042

An act relating to judgments; creating s. 56.0101, F.S.; providing definitions for purposes of ch. 56, F.S.; amending s. 56.011, F.S.; revising terminology; amending s. 56.021, F.S.; providing that an execution is valid and effective during the life of the order on which it is issued; amending ss. 56.041, 56.071, 56.09, 56.10, 56.12, and 56.15, F.S.; revising terminology; amending s. 56.16, F.S.; specifying that persons to whom a Notice to Appear has been issued may obtain possession of property levied on by complying with certain procedures; revising terminology; amending s. 56.18, F.S.; specifying that a jury, if not waived, should be empaneled as soon as possible after service of a Notice to Appear; revising terminology; amending ss. 56.19, 56.20, 56.22, 56.26, 56.27, and 56.28, F.S.; revising terminology; amending s. 56.29, F.S.; revising terminology; providing for the issuance of a Notice to Appear; providing requirements for such a notice; providing for service; providing for requirements for a responding affidavit; deleting provisions relating to examinations concerning property; providing for fraudulent transfer claims; creating s. 56.30, F.S.; providing for discovery in proceedings supplementary; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 56.0101, Florida Statutes, is created to read:

56.0101 Definitions.—As used in this chapter, the term:

(1) “Claimant” means any person other than the judgment debtor who claims any property levied on.

(2) “Corporate judgment debtor” means a judgment debtor other than an individual, an estate, or a trust that is not a business trust.

(3) “Judgment creditor” means the holder of an unsatisfied judgment, order, or decree for the payment of money, including a transferee or a surety having the right to control and collect the judgment under s. 55.13.

(4) “Judgment debtor” means each person who is liable on a judgment, an order, or a decree subject to execution under this chapter.

(5) “Levying creditor” means the levying judgment creditor.

(6) “Person” means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(7) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual

related to a spouse within the third degree as determined by the common law, and includes an individual in an adoptive relationship within the third degree.

Section 2. Section 56.011, Florida Statutes, is amended to read:

56.011 Executions; *capias ad satisfaciendum* abolished.—~~In no case shall~~ A *capias ad satisfaciendum* may not be issued upon a judgment, nor may ~~shall~~ the body of any person ~~defendant~~ be subject to arrest or confinement for the payment of money, except ~~it be~~ for fines imposed by lawful authority.

Section 3. Section 56.021, Florida Statutes, is amended to read:

56.021 Executions; issuance and return, alias, etc.—When issued, an execution is valid and effective during the life of the judgment, order, or decree on which it is issued. When fully paid, the officer executing it shall make his or her return and file it in the court which issued the execution. If the execution is lost or destroyed, the party entitled thereto may have an alias, pluries or other copies on making proof of such loss or destruction by affidavit and filing it in the court issuing the execution.

Section 4. Subsection (1) of section 56.041, Florida Statutes, is amended to read:

56.041 Executions; collection and return.—

(1) All executions shall be returnable when satisfied, and the officers to whom they are delivered shall collect the amounts thereof as soon as possible and shall furnish the judgment debtor ~~defendant~~ with a satisfaction of judgment. All receipts shall be endorsed on the execution.

Section 5. Section 56.071, Florida Statutes, is amended to read:

56.071 Executions on equities of redemption; discovery of value.—On motion made by the person ~~party~~ causing a levy to be made on an equity of redemption, the court from which the execution issued shall order the mortgagor, mortgagee, and all other persons interested in the mortgaged property levied on to appear and be examined about the amount remaining due on the mortgage, the amount that has been paid, the person ~~party~~ to whom that amount has been paid, and the date when that amount was paid so that the value of the equity of redemption may be ascertained before the property is sold. The court may appoint a general or special magistrate to conduct the examination. This section shall also apply to the interest of and personal property in possession of a vendee under a retained title contract or conditional sales contract.

Section 6. Section 56.09, Florida Statutes, is amended to read:

56.09 Executions against corporate judgment debtors ~~corporations~~; generally.—On any judgment against a corporate judgment debtor, the

~~judgment creditor corporation plaintiff~~ may have an execution levied on the current money as well as on the goods and chattels, lands and tenements of ~~the corporate judgment debtor said corporation.~~

Section 7. Section 56.10, Florida Statutes, is amended to read:

56.10 Executions against corporate judgment debtors corporations; receivership.—If an execution cannot be satisfied in whole or in part for lack of property of the corporate judgment debtor defendant corporation subject to levy and sale, on motion of the judgment creditor the circuit court in chancery within whose circuit such corporate judgment debtor corpora-tion is or has been doing business, or in which any of its effects are found, may sequester the property, things in action, goods and chattels of the corporate judgment debtor corporation for the purpose of enforcing the judgment, and may appoint a receiver for the corporate judgment debtor corporation. A receiver so appointed is subject to the rules prescribed by law for receivers of the property of other judgment debtors. His or her power shall extend throughout the state.

Section 8. Section 56.12, Florida Statutes, is amended to read:

56.12 Executions; levy, forthcoming bond.—If a judgment debtor defen-dant in execution wants to retake possession of any property levied on, the judgment debtor he or she may do so by executing a bond with surety to be approved by the officer in favor of the judgment creditor plaintiff in a sum double the value of the property retaken as fixed by the officer holding the execution and conditioned that the property will be forthcoming on the day of sale stated in the bond.

Section 9. Section 56.15, Florida Statutes, is amended to read:

56.15 Executions; stay of illegal writs.—If any execution issues illegally, the judgment debtor defendant in execution may obtain a stay by making and delivering an affidavit to the officer having the execution, stating the illegality and whether any part of the execution is due, with a bond with surety payable to the judgment creditor plaintiff in double the amount of the execution or the part of which a stay is sought conditioned to pay the execution or part claimed to be illegal and any damages for delay if the affidavit is not well founded. On receipt of such affidavit and bond the officer shall stay proceedings on the execution and return the bond and affidavit to the court from which the execution issued. The court shall pass on the question of illegality as soon as possible. If the execution is adjudged illegal in any part, the court shall stay it as to the part but if it is adjudged legal in whole or in part, the court shall enter judgment against the principal and surety on such bond for the amount of so much of the execution as is adjudged to be legal and execution shall issue thereon.

Section 10. Section 56.16, Florida Statutes, is amended to read:

56.16 Executions; claims of third parties to property levied on.—If any person, including a person to whom a Notice to Appear has been issued pursuant to s. 56.29(2), other than the judgment debtor defendant in execution claims any property levied on, he or she may obtain possession of the property by filing with the officer having the execution an affidavit by the claimant, or the claimant's himself or herself, his or her agent or attorney, that the property claimed belongs to the claimant ~~him or her~~ and by furnishing the officer a bond with surety to be approved by the officer in favor of the judgment creditor plaintiff in double the value of the goods claimed as the value is fixed by the officer and conditioned to deliver said property on demand of said officer if it is adjudged to be the property of the judgment debtor defendant in execution and to pay the judgment creditor plaintiff all damages found against the claimant ~~him or her~~ if it appears that the claim was interposed for the purpose of delay.

Section 11. Section 56.18, Florida Statutes, is amended to read:

56.18 Executions; trial of claims of third persons.—As soon as possible after the return, or after service of a Notice to Appear pursuant to s. 56.29(2), a jury, if not waived, shall be impaneled to try the right of property. If the verdict is in favor of the judgment creditor plaintiff and it appears that the claim brought pursuant to s. 56.16 was interposed for delay, the judgment creditor plaintiff may be awarded reasonable damages, not exceeding 20 percent of the value of the property claimed. If the claimant denies in writing under oath filed at least 3 days before the trial, the correctness of the appraisal of the value of the property by the officer levying the execution, and the verdict is in favor of the judgment creditor plaintiff, the jury if not waived, shall fix the value of each item thereof, or of the items covered by such denial.

Section 12. Section 56.19, Florida Statutes, is amended to read:

56.19 Judgments upon claims of third persons.—Upon the verdict of the jury, the court shall enter judgment deciding the right of property, and if the verdict is for the judgment creditor plaintiff, awarding a recovery by the judgment creditor plaintiff from the claimant defendant and the claimant's his or her sureties, of the value (as fixed by the officer, or as fixed by the jury if fixed by it) of such parts of the property as the jury may have found subject to execution that were delivered to the claimant, and awarding separately such damages as the jury may be have awarded under s. 56.18, and of all costs attending the presentation and trial of the claim.

Section 13. Section 56.20, Florida Statutes, is amended to read:

56.20 Executions on judgments against third person claimants.—If the execution issued on the judgment is not paid, it shall be satisfied in the usual manner unless on demand of the officer holding it, the principal and surety in the claim bond deliver the property released under the claim bond to the officer and pay him or her the damages and costs awarded to the judgment creditor plaintiff. If the property is returned to the officer but damages and

costs are not paid, execution shall be enforced for the damages and costs. If part of the property is returned to the officer, the execution shall be enforced for the value, fixed as aforesaid, of that not returned. All property returned shall be sold under the original execution against the judgment debtor original defendant.

Section 14. Section 56.22, Florida Statutes, is amended to read:

56.22 Execution sales; ~~time, date, and place of sale.~~—

(1) All sales of property under legal process shall take place at the time, date, and place advertised in the notice of the sheriff's sale on any day of the week except Saturday and Sunday and shall continue from day to day until such property is disposed of.

(2) Property not effectively disposed of at the initial sheriff's sale may be readvertised, as provided in s. 56.21, upon receipt of an additional deposit to cover costs incurred in connection with the maintenance of the property under legal process. ~~If In the event~~ no additional deposit is received by the sheriff, the property may be returned to the judgment debtor defendant; if the judgment debtor defendant refuses to accept such property, the property may be returned to a third party, such as a lienholder, upon presentation of a proper court order directing such return. ~~If the property cannot be returned as described in this subsection none of the above can be accomplished,~~ such property shall be disposed of as unclaimed or abandoned.

Section 15. Section 56.26, Florida Statutes, is amended to read:

56.26 Executions; mandamus to force levy and sale.—When an officer holds an unsatisfied execution and refuses to levy on property liable thereunder and on which it is his or her duty to levy or having levied, refuses to advertise and sell the property levied on, the judgment creditor plaintiff in execution is entitled to an alternative writ of mandamus requiring the officer to levy such execution or advertise and sell the property levied on, or both, as the case may be.

Section 16. Subsection (1) and paragraph (a) of subsection (4) of section 56.27, Florida Statutes, are amended to read:

56.27 Executions; payment of money collected.—

(1) All money received under executions shall be paid, in the order prescribed, to the following: the sheriff, for costs; the levying creditor in the amount of \$500 as liquidated expenses; and the priority lienholder under s. 55.10(1) and (2), s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an affidavit required by subsection (4), or the levying creditor's his or her attorney, in satisfaction of the judgment lien, if the judgment lien has not lapsed at the time of the levy. The receipt of the attorney shall be a release of the officer paying the money to him or her. If the name of more than one attorney appears in the court file, the money shall be paid to the attorney

who originally commenced the action or who made the original defense unless the file shows that another attorney has been substituted.

(4) Before the date of the first publication or posting of the notice of sale provided for under s. 56.21, at the time of the levy request to the sheriff, the levying creditor shall deliver to the sheriff an affidavit setting forth all of the following as to the judgment debtor:

(a) For a personal property levy, an attestation by the levying creditor or the levying creditor's attorney of record that he or she has reviewed the database or judgment lien records established in accordance with ss. 55.201-55.209 and that the information contained in the affidavit based on that review is true and correct. For a real property levy in accordance with s. 55.10(1) and (2), an attestation by the levying creditor or the levying creditor's ~~his or her~~ attorney of record that he or she has reviewed the records of the clerk of the court of the county where the property is situated, or that he or she has performed or reviewed a title search, and that the information contained in the affidavit, including a disclosure of all judgment liens, mortgages, financing statements, tax warrants, and other liens against the real property, based on that review or title search is true and correct.

Section 17. Section 56.28, Florida Statutes, is amended to read:

56.28 Executions; failure of officer to pay over moneys collected.—If any officer collecting money under execution fails or refuses to pay it over within 30 days after it has been received by him or her, or within 10 days after demand by the levying creditor or the levying creditor's plaintiff or his or her attorney of record made in writing and delivered during regular business hours to the civil process bureau, the officer is liable to pay the same and 20 percent damages, to be recovered by motion in court.

Section 18. Section 56.29, Florida Statutes, is amended to read:

56.29 Proceedings supplementary.—

(1) When any judgment creditor ~~person or entity~~ holds an unsatisfied judgment or judgment lien obtained under chapter 55, the judgment creditor ~~holder or judgment lienholder~~ may file a motion and an affidavit so stating, identifying, if applicable, the issuing court, the case number, and the unsatisfied amount of the judgment or judgment lien, including accrued costs and interest, and stating that the execution is valid and outstanding, and thereupon the judgment creditor ~~holder or judgment lienholder~~ is entitled to these proceedings supplementary to execution.

(2) The judgment creditor shall, in the motion described in subsection (1) or in a supplemental affidavit, describe any property of the judgment debtor not exempt from execution in the hands of any person or any property, debt, or other obligation due to the judgment debtor which may be applied toward the satisfaction of the judgment. Upon filing of the motion and affidavits that

property of the judgment debtor, or any debt, or other obligation due to the judgment debtor in the custody or control of any other person may be applied to satisfy the judgment, then the court shall issue a Notice to Appear. The Notice to Appear shall direct such person to file an affidavit, as provided in s. 56.16, with the court by a date certain, which date shall not be less than 7 business days from the date of service of the Notice to Appear, stating why the property, debt, or other obligation should not be applied to satisfy the judgment. For good cause shown, the court may shorten the time for serving an affidavit. The Notice to Appear must describe with reasonable particularity the property, debt, or other obligation that may be available to satisfy the judgment, must provide such person with the opportunity to present defenses, and must indicate that discovery as provided under the rules of civil procedure is available and that there is a right to a jury trial as provided in s. 56.18. The Notice to Appear must be served as provided for in chapter 48. A responding affidavit must raise any fact or defense opposing application of the property described in the Notice to Appear to satisfy the judgment, including legal defenses, such as lack of personal jurisdiction. Legal defenses need not be filed under oath but must be served contemporaneously with the affidavit. On such plaintiff's motion the court shall require the defendant in execution to appear before it or a general or special magistrate at a time and place specified by the order in the county of the defendant's residence to be examined concerning his or her property.

~~(3) The order shall be served in a reasonable time before the date of the examination in the manner provided for service of summons or may be served on such defendant or his or her attorney as provided for service of papers in the rules of civil procedure.~~

~~(4) Testimony shall be under oath, shall be comprehensive and cover all matters and things pertaining to the business and financial interests of defendant which may tend to show what property he or she has and its location. Any testimony tending directly or indirectly to aid in satisfying the execution is admissible. A corporation must attend and answer by an officer who may be specified in the order. Examination of witnesses shall be as at trial and any party may call other witnesses.~~

~~(5) The court may order any property of the judgment debtor, not exempt from execution, in the hands of any person, or any property, debt, or other obligation due to the judgment debtor, to be applied toward the satisfaction of the judgment debt. The court may entertain claims concerning the judgment debtor's assets brought under chapter 726 and enter any order or judgment, including a money judgment against any initial or subsequent transferee, in connection therewith, irrespective of whether the transferee has retained the property. Claims under chapter 726 are subject to the provisions of chapter 726 and applicable rules of civil procedure.~~

~~(3)(6)(a) When, within 1 year before the service of process on the judgment debtor in the original proceeding or action him or her, the judgment debtor defendant has had title to, or paid the purchase price of, any personal property to which the judgment debtor's defendant's spouse,~~

any relative, or any person on confidential terms with the judgment debtor defendant claims title and right of possession at the time of examination, the judgment debtor defendant has the burden of proof to establish that such transfer or gift ~~from him or her~~ was not made to delay, hinder, or defraud creditors.

(b) When any gift, transfer, assignment or other conveyance of personal property has been made or contrived by the judgment debtor to delay, hinder, or defraud creditors, the court shall order the gift, transfer, assignment or other conveyance to be void and direct the sheriff to take the property to satisfy the execution. This does not authorize seizure of property exempted from levy and sale under execution or property which has passed to a bona fide purchaser for value and without notice. Any person aggrieved by the levy or Notice to Appear may proceed under ss. 56.16-56.20.

(4)(7) At any time the court may refer the proceeding to a general or special magistrate who may be directed to report findings of law or fact, or both. The general or special magistrate has all the powers thereof, including the power to issue subpoena, and shall be paid the fees provided by the court law.

(5)(8) A party or a witness examined under these provisions is not excused from answering a question on the ground that the answer will tend to show him or her guilty of the commission of a fraud, or prove that he or she has been a party or privy to, or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose, or that the party or witness or another person claims to have title as against the judgment debtor defendant or to hold property derived from or through the judgment debtor defendant, or to be discharged from the payment of a debt which was due to the judgment debtor defendant or to a person on in his or her behalf of the judgment debtor. An answer cannot be used as evidence against the person so answering in any criminal proceeding.

(6)(9) The court may order any property of the judgment debtor, not exempt from execution, or any property, debt, or other obligation due to the judgment debtor, in the hands of or under the control of any person subject to the Notice to Appear, to be levied upon and applied toward the satisfaction of the judgment debt. The court may enter any orders, judgments, or writs required to carry out the purpose of this section, including those orders necessary or proper to subject property or property rights of any judgment debtor to execution, and including entry of money judgments as provided in ss. 56.16-56.19 against any person to whom a Notice to Appear has been directed and over whom the court obtained personal jurisdiction ~~impleaded defendant~~ irrespective of whether such person defendant has retained the property, subject to ss. ~~56.18 and 56.19~~ and applicable principles of equity, and in accordance with chapters 76 and 77 and all applicable rules of civil procedure. Sections 56.16-56.20 apply to any order issued under this subsection.

~~(7)~~(10) Any person failing to obey any order issued under this section by a judge or general or special magistrate or failing to attend in response to a subpoena served on him or her may be held in contempt.

~~(8)~~(11) Costs for proceedings supplementary shall be taxed against the judgment debtor defendant as well as all other incidental costs determined to be reasonable and just by the court including, but not limited to, docketing the execution, sheriff's service fees, and court reporter's fees. Reasonable attorney attorney's fees may be taxed against the judgment debtor defendant.

(9) The court may entertain claims concerning the judgment debtor's assets brought under chapter 726 and enter any order or judgment, including a money judgment against any initial or subsequent transferee, in connection therewith, irrespective of whether the transferee has retained the property. Claims under chapter 726 brought under this section shall be initiated by a supplemental complaint and served as provided by the rules of civil procedure, and the claims under the supplemental complaint are subject to chapter 726 and the rules of civil procedure. The clerk of the court shall docket a supplemental proceeding under the same case number assigned to the original complaint filed by the judgment creditor or the case number assigned to a judgment domesticated pursuant to s. 55.01, shall assign a separate supplemental proceeding number, and shall assign such supplemental proceeding to the same division and judge assigned to the main case or domesticated judgment.

Section 19. Section 56.30, Florida Statutes, is created to read:

56.30 Discovery in proceedings supplementary.—

(1) In addition to any other discovery permitted under the rules of civil procedure, on the judgment creditor's motion the court shall require the judgment debtor to appear before it or a general or special magistrate at a time and place specified by the order in the county of the judgment debtor's residence or principal place of business to be examined concerning property subject to execution. This examination may occur before issuance of a Notice to Appear.

(2) The order shall be served in a reasonable time before the date of the examination in the manner provided for service of summons or may be served on the judgment debtor or the judgment debtor's attorney of record as provided for service of papers in the rules of civil procedure.

(3) Testimony shall be under oath, shall be comprehensive, and cover all matters and things pertaining to the business and financial interests of the judgment debtor which may tend to show what property the judgment debtor has and its location. Any testimony tending directly or indirectly to aid in satisfying the execution is admissible. A corporate judgment debtor must attend and answer by a designee with knowledge or an identified officer or manager who may be specified in the order. Examination of witnesses shall

be as at trial and any party may call other witnesses to be examined concerning property that may be subject to execution.

Section 20. This act shall take effect July 1, 2016.

Approved by the Governor March 9, 2016.

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