

550.135 SHERIFF'S LEVY ON OTHER PERSONAL PROPERTY, MONEY, OR INDEBTEDNESS.

Subdivision 1. **Scope of general and specific provisions.** General provisions relating to the sheriff's levy upon personal property not covered elsewhere in this chapter and upon money or indebtedness are set forth in this section. Specific provisions relating to a sheriff's levy upon earnings are set forth in sections 550.136 and 550.142. Specific provisions relating to a sheriff's levy upon funds at a financial institution are set forth in section 550.143. Summary execution of judgment debts by an attorney for the judgment creditor is governed by chapter 551.

Subd. 2. **Other personal property.** Other personal property shall be levied on by leaving a copy of the writ of execution and a notice specifying the property levied on, with the person holding it; or, if a debt, with the judgment debtor; or, if stock or interest in stock of a corporation, with its president, secretary, treasurer, cashier, officer, or managing agent.

Subd. 3. **Money or indebtedness.** The sheriff may levy upon money or other indebtedness owed by a third party to the judgment debtor. The sheriff may serve a copy of the writ of execution through a registered or certified letter or by personal service to the third party. Upon receipt, unless governed by section 550.136 or 550.143, the third party shall remit to the sheriff as much of the amount due under section 550.04 as the third party's own debt equals.

Subd. 4. **Property not attachable.** The following property is not subject to attachment by a writ of execution served pursuant to this chapter:

(1) any indebtedness or money due to the judgment debtor, unless at the time of the service of the writ of execution the same is due absolutely or does not depend upon any contingency;

(2) any judgment owing by the third party to the judgment debtor, if the third party or the third party's property is liable on an execution levy upon the judgment;

(3) any debt owing by the third party to the judgment debtor for which any negotiable instrument has been issued or endorsed by the third party;

(4) any indebtedness or money due to the judgment debtor where the judgment debtor is a bank, savings bank, trust company, credit union, savings association, or industrial loan and thrift company with deposit liabilities;

(5) any indebtedness or money due to the judgment debtor with a cumulative value of less than \$10; and

(6) any disposable earnings, indebtedness, or money that is exempt under Minnesota or federal law.

Subd. 5. **Third party fee.** If the levy is upon earnings or upon funds at a financial institution, the third party shall be paid a \$15 fee at the time of the service of the writ of execution. Failure to pay the fee renders the levy void, and the third party shall take no action. The \$15 shall not be paid where the funds being levied on are being retained pursuant to a garnishment previously served in compliance with chapter 571. This fee may be recovered by the judgment creditor as an allowable cost. The judgment creditor shall provide the \$15 fee to the sheriff to be paid to the third party. If a third party is required to appear and submit to oral examination, the third party shall be tendered, in advance of the examination, fees and mileage for attendance at the rate allowed by law to a witness. These fees may be recovered by the judgment creditor as an allowable disbursement. In extraordinary cases, the third party may be allowed additional sums the court considers reasonable for attorney fees and other necessary expenses. The court shall then determine which party bears the burden of this expense.

Subd. 6. **Third party disclosure and remittance.** Within 15 days after receipt of the writ of execution, unless governed by section 550.136 or 550.143, the third party shall make the required disclosure and remittance to the sheriff. The remittance shall be as much of the amount due under section 550.04 as the third party's own debt equals.

Subd. 7. **Oral disclosure.** Before or after the service of a written disclosure by a third party under subdivision 6, upon a showing by affidavit upon information and belief that an oral examination of the third party would provide a complete disclosure of relevant facts, any party to the execution proceedings may obtain an ex parte order requiring the third party, or a representative of the third party designated by name or by title, to appear for oral examination before the court or a referee appointed by the court. Notice of the examination shall be given to all parties.

Subd. 8. **Supplemental complaint.** If a third party holds property, money, earnings, or other indebtedness by a title that is void as to the judgment debtor's creditors, the property may be levied on although the judgment debtor would be barred from maintaining an action to recover the property, money, earnings, or other indebtedness. In this and all other cases where the third party denies liability, the judgment creditor may move the court at any time before the third party is discharged, on notice to both the judgment debtor and the third party for an order making the third party a party to the supplemental action and granting the judgment creditor leave to file a supplemental complaint against the third party and the judgment debtor. The supplemental complaint shall set forth the facts upon which the judgment creditor claims to charge the third party. If probable cause is shown, the motion shall be granted. The supplemental complaint shall be served upon the third party and the judgment debtor and any other parties. The parties served

shall answer or respond pursuant to the Minnesota Rules of Civil Procedure for the District Courts, and if they fail to do so, judgment by default may be entered against them.

Subd. 9. **Judgment against third party upon failure to disclose or remit.** Judgment may be entered against a third party who has been served with a writ of execution and fails to disclose or remit the levied funds as required in this chapter. Upon order to show cause served on the third party, and notice of motion supported by affidavit of facts and affidavit of service upon the judgment debtor, the court may render judgment against the third party for an amount not exceeding 110 percent of the amount claimed in the writ of execution. The court upon good cause shown may remove the default and permit the third party to disclose or remit on just terms.

Subd. 10. **Forms.** No judgment creditor shall use a form that contains alterations or changes from the statutory forms that mislead judgment debtors as to their rights and the execution procedure generally. If a court finds that a judgment creditor has used a misleading form, the judgment debtor shall be awarded actual damages, costs, reasonable attorney fees resulting from additional proceedings, and an amount not to exceed \$100. All forms must be clearly legible and printed in not less than the equivalent of 10-point type. A form that uses both sides of a sheet must clearly indicate on the front side that there is additional information on the back side of the sheet.

Forms, including the statutory forms, used in executions upon earnings for the satisfaction of judgments for child support must be changed by the creditor to reflect the fact that the 70-day period of effectiveness does not apply to these executions if the judgment creditor is a county and the employer is notified by the county when the judgment is satisfied.

Subd. 11. **Third party good faith requirement.** The third party is not liable to the judgment debtor, judgment creditor, or other person for wrongful retention if the third party retains or remits disposable earnings, indebtedness, or money of the judgment debtor or any other person, pending the third party's disclosure or consistent with the disclosure the third party makes, if the third party has a good faith belief that the property retained or remitted is subject to the writ of execution. In addition, the third party may, at any time before or after disclosure, proceed under Rule 67 of the Minnesota Rules of Civil Procedure for the District Courts to make deposit into court. No third party is liable for damages if the third party complies with the provisions of this chapter.

Subd. 12. **Bad faith claim.** If, in a proceeding brought under section 550.143, subdivision 10, or a similar proceeding under this chapter to determine a claim of exemption, the claim of exemption is not upheld, and the court finds that it was asserted in bad faith, the judgment creditor shall be awarded actual damages, costs, reasonable attorney fees resulting from the additional proceedings, and an amount not to exceed \$100. If the claim of exemption is upheld, and the court finds that the judgment creditor disregarded the claim of exemption in bad faith,

the judgment debtor shall be awarded actual damages, costs, reasonable attorney fees resulting from the additional proceedings, and an amount not to exceed \$100. The underlying judgment shall be modified to reflect assessment of damages, costs, and attorney fees. However, if the party in whose favor a penalty assessment is made is not actually indebted to that party's attorney for fees, the attorney's fee award shall be made directly to the attorney and if not paid, an appropriate judgment in favor of the attorney shall be entered. Any action by a judgment creditor made in bad faith and in violation of this chapter renders the execution levy void and the judgment creditor liable to the judgment debtor named in the execution levy in the amount of \$100, actual damages, and reasonable attorney fees and costs.

Subd. 13. **Discharge of a third party.** Subject to subdivisions 6 and 14, the third party, after disclosure, shall be discharged of any further obligation to the judgment creditor when one of the following conditions is met:

(a) The third party discloses that the third party is not indebted to the judgment debtor or does not possess any property, money, or earnings belonging to the judgment debtor that is attachable as defined in this chapter. The disclosure is conclusive against the judgment creditor and discharges the third party from any further obligation to the judgment creditor other than to retain and remit all nonexempt disposable earnings, indebtedness, or money of the judgment debtor that was disclosed.

(b) The third party discloses that the third party is indebted to the judgment debtor as indicated on the execution disclosure form. The disclosure is conclusive against the judgment creditor and discharges the third party from any further obligation to the judgment creditor other than to retain and remit all nonexempt disposable earnings, indebtedness, or money of the judgment debtor that was disclosed.

(c) The court may, upon motion of an interested person, discharge the third party as to any disposable earnings, money, property, or indebtedness in excess of the amount that may be required to satisfy the judgment creditor's claim.

Subd. 14. **Exceptions to discharge of a third party.** The third party is not discharged if:

(a) Within 20 days of the service of the third party's disclosure, an interested person serves a motion relating to the execution levy. The hearing on the motion must be scheduled to be heard within 30 days of the service of the motion.

(b) The judgment creditor moves the court for leave to file a supplemental complaint against the third party, as provided for in subdivision 8, and the court upon proper showing, vacates the discharge of the third party.

Subd. 15. **Joinder and intervention by persons in interest.** If it appears that a person, who is not a party to the action, has or claims an interest in any of the disposable earnings, other indebtedness, or money, the court shall permit that person to intervene or join in the execution proceeding under this chapter. If that person does not appear, the court may summon that person to appear or order the claim barred. The person so appearing or summoned shall be joined as a party and be bound by the judgment.

Subd. 16. **Appeal.** A party to an execution proceeding aggrieved by an order or final judgment may appeal as in other civil cases.

History: 1990 c 606 art 1 s 2; 1993 c 156 s 1; 1995 c 202 art 1 s 25