

## **CHAPTER 28-21 EXECUTION OF THE JUDGMENT**

### **28-21-01. Execution at any time within twenty years.**

A judgment creditor or the party's duly appointed personal representatives at any time within twenty years after the entry of judgment may proceed to enforce the judgment by execution as provided in this chapter. If the judgment creditor in a mortgage foreclosure does not proceed within sixty days after entry of judgment in the foreclosure to serve a special execution and proceed without delay to a sheriff's sale, any other lienholder or other interested person may obtain the special execution and proceed to arrange for a sheriff's sale.

### **28-21-02. Stay of execution but not of judgment.**

Superseded by N.D.R.Civ.P., Rule 62.

### **28-21-03. Two kinds of execution.**

There are two kinds of execution, one against the property of the judgment debtor and another for the delivery of the possession of property and any damages for withholding the property.

#### **28-21-03.1. General execution.**

If the judgment requires the payment of money or the delivery of property, the judgment may be enforced by execution.

#### **28-21-04. Special executions.**

If the judgment requires the sale of property, the judgment may be enforced by a special execution directing the sale and application of the proceeds in conformity with the judgment. Real property must be sold in the county in which it is located.

#### **28-21-04.1. Self-execution judgments.**

If the judgment requires the performance of any act, obedience to that act may be enforced by service of a certified copy of the judgment upon the party against whom it is given, or the person who is required to obey the same. Refusal may be punished by contempt.

#### **28-21-04.2. Summary execution on moneys retained pursuant to garnishment.**

If a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and three hundred sixty days after service of the garnishment summons. The execution may be served by personal service or by certified mail upon the third party by a sheriff or by an attorney licensed to practice law in this state. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 within twenty days after service of the garnishment summons, an execution may not be made against moneys claimed as exempt and retained under the garnishment summons until the court determines that the moneys being garnished are not exempt.

#### **28-21-05. Execution issued to sheriff of counties where judgment docketed.**

An execution may be issued by the clerk of court in which the judgment was entered to the sheriff of any county where the judgment is docketed. If the execution requires the delivery of real or personal property, the execution may be issued to the sheriff of any county where the property or portion of the property is situated. More than one execution may be issued at the same time to the sheriffs of different counties.

**28-21-05.1. Levy with certified copy of judgment.**

A sheriff may levy upon a person's personal property upon receipt of a certified copy of judgment docketed in any county requiring payment of money or the delivery of personal property. The judgment creditor may also proceed to enforce the judgment by execution.

**28-21-05.2. Department of health and human services may issue executions for child support arrearages.**

1. Notwithstanding section 28-21-05, if the judgment debtor is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of health and human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.
2. A writ of execution issued by the department of health and human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may be issued in a form prescribed by the department of health and human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 which has been certified under section 14-08.1-08.
3. A writ issued by the department of health and human services is returnable to the department.

**28-21-06. Issuance and contents of execution.**

An execution must be issued in the name of the state of North Dakota, attested in the name of the judge of the court that entered the judgment, sealed with the seal of the court, subscribed by the clerk of that court, and directed and delivered to a sheriff. The execution must describe the judgment, stating the date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, the names of the parties, and the last-known address of the judgment debtor. A special execution must state the amount of money due to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest applicable to the judgment, the amount of the costs accrued on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a different county, the date and time the judgment was docketed in that county. If the execution is for the delivery of the possession of property, the execution must also particularly describe the property to be delivered, identify the party entitled to possession of the property, and if the same judgment orders the judgment debtor to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts due as of the date of issuance of the execution. Upon receipt of an execution, the sheriff shall:

1. Satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of the judgment debtor, and if sufficient personal property cannot be found, out of the real property belonging to the debtor on the date when the judgment was docketed in the county or at any time after that date. If property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or
2. If the execution is for the delivery of the possession of property, deliver the property to the party entitled to the property and satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the judgment debtor and if sufficient personal property cannot be found, out of the real property of the judgment debtor on the date when the judgment was docketed in the county or at any time after that date. If the property cannot be delivered, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the judgment debtor as if an execution had been issued.

**28-21-07. Time of return.**

The execution must be returned to the clerk within sixty days after the receipt by the officer. If a sheriff's levy has been made within the sixty days, the execution must be returned within a reasonable time following the completion of the sale of the property or ninety days after receipt by the officer. If a levy has been made and the issue of ownership of the property or interest in the property is raised by any party, or if the issue whether the property is exempt under chapter 28-22 is raised by either party, the court having jurisdiction may extend, for good cause shown, the execution for a reasonable time to accommodate due notice and hearing to determine these issues and to provide time for the publication of notice of sale and sale of the property subject to execution.

**28-21-08. Property subject to levy - Manner of levy.**

1. An interest in property of the judgment debtor not exempt by law is subject to execution. Shares and interests in any corporation or company, debts and credits, and all other property not capable of manual delivery may be taken on execution and sold as provided in this chapter. The levy under an execution must be made as follows:
  - a. On real property, the sheriff shall file a notice of levy with the recorder of the county in which the property is located which has been signed by the sheriff and which states the names of the parties to the action and a description of the property.
  - b. On personal property capable of manual delivery, the sheriff shall take the property into custody. When taking the property, the sheriff shall deliver a copy of the execution and notice of levy to the person from whom the property was taken.
  - c. On money, judgments, drafts, promissory notes, or other papers of like character, by serving a copy of the execution to the person who has custody of the property, except for wage garnishment.
  - d. On other personal property, the sheriff shall leave a copy of the execution and a notice of levy with the person holding the property. If the property consists of a right or share in the stock of a corporation or interest or profits in the corporation, the sheriff shall leave the copy with any officer or managing agent of the corporation. If the property consists of membership interests in a limited liability company or interest or profits in a limited liability company, the sheriff shall leave the copy with any officer or managing agent of the limited liability company.
2. The sheriff may elect not to seize property during the time period the debtor has to claim exemptions under chapter 28-22 or in the case of property that by reason of bulk or other cause cannot be removed immediately. Service of the notice of levy under this section and section 28-21-12 is as valid and effectual as if the property had been seized and the possession and control of the property retained by the officer. The lien of the writ of execution is effectual from the time the actual levy is made under this section and section 28-21-12.

**28-21-09. Pledged or mortgaged property may be levied on.**

When property is pledged or mortgaged or is subject to a lien, the right and interest of the judgment debtor may be sold without taking possession of or removing the property to the place of sale, but the entire right and interest of the debtor in the property pledged or covered by each lien must be sold as one parcel, and the purchaser acquires all the right and interest of the debtor.

**28-21-10. Officer's proceedings on execution.**

When an execution is delivered to any officer, the officer shall endorse on the execution the day and hour when the officer received the execution and shall proceed to execute the execution with diligence. If executed, an exact description of the property sold with the date of the levy, sale, or other act done by virtue of the execution, including all costs incurred, must be endorsed upon or appended to the execution. If the writ was not executed, the execution must be returned wholly unsatisfied with all costs incurred endorsed upon or appended to the

execution. If the writ was executed in part only, the reason along with all costs in the case must be stated in the return.

**28-21-11. Levy and sale.**

The officer shall execute the writ by levying on the property of the judgment debtor, or by selling the same, selling the other property, and paying to the judgment creditor the proceeds, or so much thereof as will satisfy the execution.

**28-21-12. Notice of levy - Service - Contents.**

In all cases of levy upon personal property, the sheriff or other officer must serve the notice of levy in the same manner as a summons is served in accordance with the North Dakota Rules of Civil Procedure. Such notice must have written or printed upon its face the further notice to the debtor, that if exemptions are claimed or demanded, such claim must be made within ten days after service of notice.

**28-21-12.1. Property delivery - Penalty.**

Any person who has received notice of levy in accordance with this chapter and fails to surrender and deliver the property levied on under section 28-21-08 upon demand of the sheriff is guilty of a class B misdemeanor and may be guilty of contempt of court.

**28-21-13. Amount levied - When lien on personalty.**

The officer shall select as nearly as practicable property in quantities as will be likely to bring the exact amount required to be raised and may make more than one levy if the officer determines multiple levies necessary. A writ of execution is not a lien on personal property before the actual levy.

**28-21-13.1. Levy when more than one execution is outstanding.**

If more than one execution against a judgment debtor is outstanding when a levy upon property of a judgment debtor is made, the property must be applied to the execution first received by the sheriff. The balance, if any, of the property must be applied to subsequent executions in order of time as received by the sheriff. However, property of the judgment debtor which was not previously levied upon but which is subject to levy and which is particularly described either in the execution or in a written notice to the sheriff by the judgment creditor or the creditor's agent or attorney must be applied to that execution regardless of time of receipt of the execution by the sheriff.

**28-21-14. What need not be sold.**

Money levied on may be appropriated without being advertised or sold. The same may be done with judgments, drafts, promissory notes, or other papers of like character, if the judgment creditor will receive them at their par value as cash or if the officer can exchange them for cash at that value, and an assignment thereof by the officer shall have the same effect as if made by the execution debtor.

**28-21-15. Payment to sheriff by debtor's debtor.**

After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of that person's debt, or so much thereof as is necessary to satisfy the execution, and the sheriff's receipt is a sufficient discharge for the amount so paid.

**28-21-16. Claim by third person - Sheriff's jury.**

Repealed by S.L. 1985, ch. 347, § 9.

**28-21-17. Execution against principal first.**

If a judgment is rendered upon any instrument in writing in which two or more persons are severally bound, and it appears to the court that a person signed the same as surety or bail for that person's codefendant, the court shall state which of the defendants is principal debtor and

which is surety or bail. Execution issued on the judgment must command the sheriff to cause the property of the principal debtor to be sold and if the proceeds from that sale are insufficient, to collect the deficiency from the property of the surety or bail. The property of the principal debtor within the jurisdiction of the court must be exhausted before any of the property of the surety or bail may be taken in execution.

**28-21-18. Return of writ by mail.**

When execution is issued in any county and directed and delivered to the sheriff of another county, the sheriff after discharging all the duties required by law shall mail the execution to the clerk who issued the execution. On proof by the sheriff that the execution was mailed soon enough to have reached the clerk before the execution's expiration, the sheriff is not liable for any penalty if the execution does not reach the office in due time.

**28-21-19. Amercement of sheriff.**

Repealed by S.L. 1993, ch. 103, § 8.

**28-21-20. Amercement of clerk.**

Repealed by S.L. 1993, ch. 103, § 8.

**28-21-21. Measure of amercement.**

Repealed by S.L. 1993, ch. 103, § 8.

**28-21-22. Procedure against officer.**

Repealed by S.L. 1993, ch. 103, § 8.

**28-21-23. Surety of sheriff made party.**

Repealed by S.L. 1993, ch. 103, § 8.

**28-21-24. Officer's reimbursement.**

Repealed by S.L. 1993, ch. 103, § 8.

**28-21-25. Limitation on bond requirements in litigation.**

1. In civil litigation under any legal theory, the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review must be set in accordance with applicable laws or court rules, except that the total supersedeas bond that is required of all appellants collectively may not exceed twenty-five million dollars, regardless of the amount of the judgment.
2. Notwithstanding subsection 1, if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment.

**28-21-26. Amount payable to sheriff by depository institution or credit union.**

The amount payable to a sheriff by a depository institution or credit union that has been served with a notice of levy is limited to the lesser of the amount necessary to satisfy the execution or the deposit account balance of the debtor as shown by the deposit institution's or credit union's records at the time the notice of levy is served.