

§3131. Turnover orders, sales

1. Turnover order. When it is shown at a hearing under this chapter that the judgment debtor owns personal property or real property which is not wholly exempt from attachment or execution pursuant to sections 4421 to 4426, the court shall determine the value of the property or interest and the extent to which the property or interest is exempt. Upon request of the judgment creditor, the court shall order the judgment debtor to turn over to the judgment creditor in partial or full satisfaction of the judgment, interest and costs, such items of property which are not in whole or in part exempt and the value of which is determined to be less than or equal to the amount owed on the judgment, interest and costs.

[PL 1987, c. 184, §14 (NEW).]

2. Sale order. Upon the request of the judgment creditor, the court shall order the sale by the judgment creditor of property owned by the judgment debtor in full or partial satisfaction of the amount owed on the judgment, interest and costs, including the costs of sale, in the following situations:

A. When it is determined that the value of wholly nonexempt property is greater than the amount owed on the judgment, interest and costs, and the judgment creditor and judgment debtor cannot agree as to which items of property shall be applied to the satisfaction of the judgment; [PL 1987, c. 184, §14 (NEW).]

B. When wholly nonexempt property is not available to fully satisfy the judgment and it is determined that the value of partially exempt property is greater than the exemption available for that item and the property cannot practically be divided into its exempt and nonexempt portions; or [PL 1987, c. 184, §14 (NEW).]

C. When the judgment debtor's property is not subject to physical division or it is otherwise impractical to provide for satisfaction of the judgment in kind. [PL 1987, c. 184, §14 (NEW).]
[PL 1987, c. 184, §14 (NEW).]

3. Notice of turnover order and sale. The judgment creditor shall give notice of any turnover order or sale to any person who has a security interest, mortgage, lien, encumbrance or other interest in the property when the interest is recorded, possessory or of which the judgment creditor has actual knowledge. The judgment creditor shall provide notice of sale to the judgment debtor. In the case of a turnover order, the notice must include a copy of the order, the name and address of the judgment creditor and the name and address of the attorney, if any, representing the judgment creditor in the disclosure proceeding. Notice of a turnover order must be provided within 30 days after the entry of the turnover order. In the case of a sale, the notice must be of the type which a secured creditor is required to provide to a debtor in a sale of secured property subject to Title 11, section 9-1611, and must be provided at the time required under that section. If the judgment creditor fails to provide the required notice of sale or turnover order to others, the creditor is liable to the 3rd parties for any loss caused by the failure.

[PL 1999, c. 699, Pt. D, §10 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

4. Redemption and time of sale. Any real property subject to a sale order may be redeemed from the sale order within 90 days from the date of the order by payment to the judgment creditor of the amount of the judgment, costs and interest through the date of payment.

A. If redemption does not occur within the redemption period, the judgment creditor shall sell the real property within 30 days after the end of that period, unless the 30-day period is extended for cause by order upon motion made within the 30-day period. [PL 1987, c. 184, §14 (NEW).]

B. The judgment creditor shall sell personal property subject to a sale order within 30 days of the order, unless that time period is extended for cause by order upon motion made within the 30-day period. The property may be redeemed before the sale occurs by payment to the judgment creditor

of the amount of the judgment, costs and interest through the date of payment, plus expenses of sale incurred through that date. [PL 1987, c. 184, §14 (NEW).]
[PL 1987, c. 184, §14 (NEW).]

5. Method and effect of sale. Sale of the property may be by public or private sale and by any method which is commercially reasonable. The judgment creditor may buy at any sale at which a secured party could buy if the sale occurred pursuant to Title 11, section 9-1610. The sale has the effect accorded dispositions under Title 11, section 9-1617, whether the property is real or personal.
[PL 1999, c. 699, Pt. D, §10 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

6. Sale proceeds. When the property is subject to a security interest, mortgage, lien, encumbrance or other interest which is subordinate to that of the judgment creditor and which is recorded, possessory or of which the judgment creditor has actual knowledge, which secures the payment of any indebtedness, the judgment creditor shall remit the excess of any sale proceeds over the amount owed on the judgment, costs and interest through the sale date, plus the expenses of sale, to the holder of the interest up to the amount of the indebtedness. The judgment creditor shall remit to the 3rd party any exempt portion of the sale proceeds subject to the 3rd party's interest. The judgment creditor shall remit any further excess, plus any exempt portion of the sale proceeds which is not subject to a 3rd party interest, to the judgment debtor and shall be entitled to any deficiency.
[PL 1987, c. 708, §8 (AMD).]

7. Affidavit of sale. Within 30 days of the sale, the judgment creditor shall file with the court an affidavit setting forth the date, place, manner, expenses and proceeds of the sale and reciting that a copy of the affidavit has been delivered to the judgment debtor, or mailed to the last known address of the judgment debtor, and to any 3rd party entitled to receive notice of the sale under subsection 3.
[PL 1987, c. 184, §14 (NEW).]

8. Challenge to sale. The judgment debtor or the 3rd party may contest the accounting of the sale, including the manner in which it was conducted, by motion filed within 30 days of the mailing or delivery of the affidavit to the debtor. Any challenge shall not affect ownership of, or title to, the property sold, but shall be for money damages only. If the sale is challenged by the judgment debtor and it is found that the judgment creditor failed to comply with the requirements of this section, it shall be presumed that the proceeds of a properly conducted sale would have at least fully satisfied the judgment. Such a presumption against the judgment creditor may be overcome only by clear and convincing evidence.
[PL 1987, c. 184, §14 (NEW).]

9. Lien. An order entered pursuant to this section constitutes a lien against the property which is the subject of the order and against the proceeds of any disposition of the property by the judgment debtor which occurs at any time after entry of the order. The lien extends to proceeds of any disposition of the property, real or personal, subject to the lien of the judgment creditor to the extent that a secured party would have an interest in the proceeds under Title 11, section 9-1315, subsection (1). The lien must be for the full amount of the unpaid judgment, interest and costs, and becomes perfected as to 3rd parties on the earlier of:

- A. The time the judgment creditor or purchaser takes possession of the property; [PL 1987, c. 184, §14 (NEW).]
- B. If the property is real estate, the time when an attested copy of the turnover or sale order is filed with the registry of deeds where a mortgage would be filed to be duly perfected; [PL 1987, c. 184, §14 (NEW).]
- C. If the property is personalty of a type a security interest in which may be perfected by filing pursuant to Title 11, the time when an attested copy of the turnover or sale order is filed in the office of the Secretary of State; [PL 1999, c. 699, Pt. D, §11 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

D. If the property is a motor vehicle for which a certificate of title is required, the time when an attested copy of the turnover or sale order is delivered to the office of the Secretary of State where notice would be delivered pursuant to Title 29-A, section 665, subsection 1; or [PL 1995, c. 65, Pt. A, §38 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

E. If the judgment creditor or purchaser takes possession of the property, or if an order is recorded, filed or delivered pursuant to this subsection during the pendency of any properly perfected prejudgment or post-judgment attachment obtained in the underlying action, or any judgment lien created pursuant to section 4651, the time when the attachment or lien was duly perfected against the property. [PL 1987, c. 184, §14 (NEW).]

[RR 1999, c. 2, §14 (COR); RR 1999, c. 2, §15 (AFF).]

10. Equitable powers. The court is given equitable powers to make all appropriate orders to effectuate or compel obedience to turnover or sale orders.

[PL 1987, c. 184, §14 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §6 (RPR). PL 1983, c. 125, §1 (AMD). PL 1987, c. 184, §14 (RPR). PL 1987, c. 708, §8 (AMD). PL 1995, c. 65, §A38 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1999, c. 699, §§D10,11 (AMD). PL 1999, c. 699, §D30 (AFF). RR 1999, c. 2, §14 (COR). RR 1999, c. 2, §15 (AFF).

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