

Winning a case in court is only the beginning of the process for collection of money that is owed to a plaintiff by a debtor. Unfortunately, in most cases, the debtor does not normally pay up once the plaintiff has won. Therefore, it is up to the plaintiff to pursue the legal avenues available to him.

First and foremost, the judgment the plaintiff obtained is good for 10 years from the date of judgment, renewable for another 10 years if obtained in a General District Court and for 20 years from date of judgment, renewable for another 20 years, if obtained in Circuit Court. This is the time in which the plaintiff can pursue collection of the debt.

One often used process is called the Writ of Fieri Facias. This is usually referred to as either a Writ of Fieri Facias or Levy. This process authorizes the Sheriff or High Constable to go to the debtor's residence and inventory or seize property for collection of the debt. The Writ of Fieri Facias is good for 90 days from the date of issuance. This means the Sheriff has (90) days in which to execute the process. It doesn't usually take (90) days to execute, but some cases are more difficult than others and will take longer.

Steps to the levy process:

Once received by the Sheriff/High Constable, the Writ is time-stamped and entered into the computer. It is then given to the zone deputy (the deputy who serves the area where the defendant lives).

If the deputy is unable to determine the approximate value of property to be levied upon, he may, at the expense of the plaintiff, hire an appraiser.

After the deputy inventories the property, he returns the Writ with the inventory list to the clerical staff who would then type an inventory letter and mail a copy to both the plaintiff and defendant.

The inventory form will outline what property was levied upon and instruct the plaintiff in the next step to the levy process.

If the plaintiff wishes to proceed to sell the levied property, he may do so by sending a copy of the inventory form with a check for \$100.00 to cover the advertising fee.

Once the Sheriff receives the advertising fee for sale, a Notice of Sale is prepared by a clerk and mailed to both the plaintiff and defendant. By law, the Sheriff must give at least ten (10) days' notice before any auction takes place.

Advertising of the sale is placed in four locations within the City of Virginia Beach.

One is near or at the place where the sale is to be held. Sale signs are also posted in the Civil Process lobby, in the General District Court Building, and at Farmer's Market. The signs are property of the Sheriff's Office and cannot be removed without our permission. Sheriff's sales are also advertised on cable TV, VBTV, channel 48. This is at no expense to the plaintiff. The Sheriff's sales will also be advertised on the Sheriff's web site.

The plaintiff may advertise in the newspaper but the advertisement must be approved by the Sheriff prior to placing the ad. This will ensure all legal requirements are met. The cost of advertising in the newspaper is at the plaintiff's expense, however, any cost incurred to recover the debt may be added.

The plaintiff would be wise to keep all receipts related to the collection of the debt.

When the plaintiff receives the inventory form, the last paragraph informs him how much of an indemnity bond will be needed prior to going to sale, if one has not already been posted. The bond indemnifies the Sheriff against any suit brought by third parties, should we levy upon the property in the debtor's possession but owned by another. This bond must be posted prior to the sale. If the bond requested is not posted, the sale will be postponed. Surety for the bond can be obtained through an insurance company or a bondsman. Arrangements need to be coordinated with our office so we can properly complete the bond.

If the plaintiff refuses to provide a bond when asked, the Sheriff is then under no obligation to proceed and can return the Writ back to court not executed.

The plaintiff's lien is good for a reasonable time from the date the deputy levied. Our courts have determined a reasonable time to mean one (1) year. This means the plaintiff can pursue collection under the Writ for one (1) year from the date of executing the levy. This allows for compromise between the plaintiff and the defendant. If agreements break down, the plaintiff still has the right to proceed to sale. We call this postponement. If, however, the plaintiff does not want to proceed to sale, he may cancel the writ at any time.

If after one year, the property remains unsold, the lien then expires and the levy is returned to court.

Normally, the deputy performs the auction. However, if the plaintiff wants to hire an auctioneer, this is acceptable. The auctioneer must be approved by the Sheriff and is done so at the expense of the plaintiff.

Both the plaintiff and defendant have rights and defenses and should seek the advice of an attorney if in doubt as to how to proceed.

Sheriff Sales

In as much as it is the Sheriff's duty to protect both the plaintiff and defendant, he has the right to refuse a bid if he determines it to be unreasonable. The Sheriff cannot tell bidders what he believes is a reasonable bid. This is to encourage bidders to bid what they believe to be the fair market value of the property being offered for a sale.

Guidelines for Sheriff's sale:

Anyone may bid at a Sheriff's sale, except employees and relatives of any constitutional officer in the State of Virginia. This includes the plaintiff and defendant.

The sale will take place where the property is stored. This could be a storage facility, the residence of the defendant, or on the courthouse steps. Location will be clearly advertised.

The terms of sale will vary from sale to sale. Therefore, it is important the bidder listens carefully when the terms of sale are announced. The following are some of the consistent terms:

Everything is sold as is. No warranties apply.

Everything is sold subject to any and all liens.

Everything is sold to the highest bidder for cash.

The property must be removed at the conclusion of the sale. Therefore, if moving arrangements need to be made, the bidder should give this some thought before bidding.

Any person who bids on property but fails to pay at the conclusion of the sale is liable for any difference if the property resells at a lower amount at another auction.

All bids must be reasonable and the deputy reserves the right to refuse a bid which is considered unreasonable.

There are many reasons a Sheriff's sale may be canceled or postponed. Bidders would be wise to call our office at 385-6336 the morning of the scheduled sale to inquire if it has been canceled.

There are many steps to the levy process. This is not a fast remedy to collecting a debt. However, it certainly can be effective, and in some cases, swift. The key is to provide the Sheriff with as much information as possible about the defendant and calling the office when you have questions. Please be reminded that the Sheriff cannot give legal advice but will certainly be glad to guide a person through the policies and process.