

HARFORD COUNTY SHERIFF'S OFFICE

Standard Operating Procedure

ISSUING COMMAND: Court Services Division		S.O.P. # CS14-3
ISSUE DATE: March 28, 2014	EFFECTIVE DATE: March 28, 2014	
REVISION DATE: MAY 30, 2024	REVISION NUMBER: 2	
SUBJECT: Writs of Execution & Sheriff Sales (also incorporates CS 14-5 and CS14-7)		
SUB - TOPICS: Sheriff Sales, Writ of Execution, and Writ of Replevin		
REFERENCES:		
Rules, regulations, policies and procedures stated in written directives of the Harford County Sheriff's Office are for agency use only and do not apply in any criminal or civil proceedings. They shall not be construed as creating a higher legal standard of care or safety in an evidentiary sense with respect to third party claims. Violations thereof will only form the basis for Agency administrative sanctions.		

I. POLICY

The following standard operating procedure establishes the standards by which real property, personal property, goods, chattels, rights, credits, and/or effects of a defendant will be levied, seized, or replevined. The purpose of a Writ of Execution is to attempt to satisfy a money judgment owed or by conducting a levy and/or seizure of personal or real property owned by the Defendant.

All Writs of Execution, Replevins, and Sheriff Sales executed by the Harford County Sheriff's Office (HCSO) will be conducted in accordance with the Annotated Code of Maryland.

II. PERSONNEL AFFECTED

This Standard Operating Procedure affects the members of the Civil Unit.

III. DEFINITIONS

- A. Bond – The posting of money, securities, or an agreement given in good faith to the Court to ensure protection of parties in an action to comply with the Orders of the Court.
- B. *Custodia Legis* – “In the custody of the law”. Levied or seized property is in the custody and control of the Court and/or HCSO.
- C. Eloigne – The return made on a Writ of Replevin when the goods have been either moved or hidden from the HCSO.
- D. Joint Tenancy – All parties having interest and title together. A judgement may be served on one (1) of the parties, if the Court orders. This action would then convert it to Tenants in Common.
- E. Judgment – An order from the Court finding that the Defendant owes an amount of money to the Plaintiff/Attorney.
- F. Levy – An inventory of property (goods and chattels) that remains in the possession of the Defendant while the property is still in the legal custody of the Court and/or HCSO. This is also known as a *custodia legis* and is valid for 120 days.
- G. Replevin – A Court order requesting that a specific item(s) be seized and returned to the Plaintiff/Attorney.

- H. Sale Ad Notice – A notice published in a local newspaper that informs the Public of a Sheriff's Sale. The notice must state the date, time, type of property to be sold, and the terms of the Sale. This notice must appear in the newspaper at least twenty (20) days prior to the date of the Sale. **This does not apply to perishable goods.**
- I. Satisfaction of Judgment – The Defendant pays the money owed on a judgment. Interest, Court costs, and additional expenses may be added to the judgment amount. These monies may be paid to the Plaintiff/Attorney or to directly to the HCSO. The amount paid must be in full and it must be paid with a certified check or a cashier's check. **Personal or business checks or money orders will NOT be accepted.**
- J. Seizure – The physical removal of property from the Defendant. The removed property is immediately placed in the custody of the HCSO.
- K. Tenants in Common – Two (2) or more parties sharing ownership and interest in the property. If there is nothing to state otherwise, the ownership is presumed to be Tenants in Common, with the exception of spouses.
- L. Tenants in Entirety – Ownership used by married parties and typically considered Joint Tenancy. Real and personal property of a husband and wife, which is jointly owned by both, is exempt from execution if the judgment is only against on (1) spouse.
- M. Writs of Execution – A Writ issued by the Court directing the HCSO to take into custody, (*custodia legis*) or control, the real or personal property and/or effects of a Defendant to satisfy the judgment of the Plaintiff/Attorney.

IV. TYPES OF WRITS

A. ATTACHMENT BEFORE JUDGMENT

1. A levy or seizure of property before a Judgment has been entered, an Attachment before Judgment is typically conducted when the Plaintiff/Attorney has reason to believe that the Defendant has been evading service of Court papers or that he/she may plan to remove, hide, or sell the property in question.
2. This writ may have originated in another county, but it does not have to be filed in Harford County prior to execution on the property.

B. WRIT OF EXECUTION

1. This is a Judgment that has been entered by the Court.
2. The HCSO is directed to levy or seize property in an attempt to satisfy the Judgment of the Plaintiff/Attorney.
3. Additional writs can be filed, but only one satisfaction may be had on the Judgment.
4. Also, if the writ originated in another county, it must be recorded in Harford County before being executed.

NOTE: Do NOT serve writs outside of Harford County.

C. WRIT OF REPLEVIN & WRIT OF POSSESSION

This writ is an Order from the Court for the HCSO to seize specific property from the Defendant or any person holding the property and return it to the Plaintiff/Attorney.

D. WRIT OF CAPIAS IN WITHERNAM

1. This is an Order from the Court that is issued when a Writ of Replevin is returned UNABLE TO LOCATE GOODS, also known as ELOIGNED.
2. This writ directs the HCSO to levy on substitute goods of the Defendant of the same value as the goods that were the subject of the Replevin.
3. If, at any time during the execution of a Writ of Capias in Withernam, the Defendant produces the good which were the subject of the Writ of Replevin, the Writ of Capias in Withernam will be countermanded and the Writ of Replevin will be executed.
4. This type of writ is rare and seldom used.

E. WRIT OF SEQUESTRATION

1. This is an Order from the Court directing the HCSO to levy on and/or seize real or personal property from the Defendant in order to satisfy a Judgment.
2. It usually has the HCSO seize the goods in question and place them with a third party for safe keeping until such a time that the Court decides ownership.
3. This type of writ is typically used in divorce cases where the husband and wife often argue over property. It is seldom used.

V. **EXECUTION & REPLEVIN PROCESS**

A. Levy & Leave

1. Write up file folder, checking Writ for errors in the name, address, instructions, etc. All information must be correct in order to serve the Writ.
2. If any information is incorrect, contact the Plaintiff/Attorney and advise them of the error. Request that they file amended instructions containing the correct information with the Court and HCSO. For minor errors, amended instructions may be emailed to the HCSO to save time.
 - a. To levy or seize vehicles, a copy of the title and registration of the vehicle will need to be requested from the Motor Vehicle Administration (MVA). **Do NOT attempt to execute the Writ without these documents.**
 - b. To levy or seize real property, a copy of the deed to the property will be needed. The Plaintiff/Attorney's Attorney will obtain this from the Court. **Do NOT attempt to execute the Writ without this document as the deed will be part of the levy.**
3. Attempt to get into the home by talking. **Do not force your way in WITHOUT a Court Order.** Once inside the home, the Deputy may enter any room without interference by the Defendant.
4. If during the levy or seizure, anyone should try to interfere with the Deputy's actions or ask him to leave, the individual should be advised that he/she will be arrested and charged with Obstruction of Justice, etc. should he/she continue.

NOTE: The Deputy does NOT have to enter the home to conduct a levy on real property; instead, he need only see it.

5. Try to make contact with the person on the Writ, unless there is a suitable of-age substitute available. Explain the Writ and available options (pay debt or agree to levy) and proceed accordingly.

- a. List all items that are NOT subject to exemption on the levy form.
 - b. List an estimated value for each item, if possible.
6. Once executed, leave copies of the Judgment and levy form with the party. If the Deputy did not deal directly with the Defendant, copies of the Judgment and levy form should be mailed to the last known address. Explain to the Defendant that there is a thirty (30) day period from the date of the levy in which an exemption may be filed, or the Judgment may be settled with the Plaintiff/Attorney.
- a. If the levy was conducted on real property and no one was home at the time of service, post a copy of the Judgment, levy form, and deed on the front door. Mail a separate copy to the Defendant's last known address.
 - b. The above also applies to a levy conducted on a vehicle; however, the MVA documents do not need to be attached to the Defendant's copy.
7. Occasionally, the Defendant will choose to pay the Judgment owed to the Plaintiff/Attorney. The Deputy will refer to Defendant to the Plaintiff/Attorney to make payment.
- a. It is the responsibility of the Deputy to follow up with the Plaintiff/Attorney to verify disposition.
8. If the Defendant and the Plaintiff/Attorney work out a payment schedule, the Attorney will recall the Writ. If the Defendant defaults on the arrangement, the Attorney may re-issue the Writ.
9. Fill out the return of service and disposition form, noting if a levy or payment of Judgment was made and return it to the Court.

B. Levy & Seize

1. Write up folder and make sure all paperwork is correct.
2. If a seizure is for personal property and a previous levy has been conducted, the Plaintiff/Attorney must request estimates from movers, storage facilities, etc. Also, request the amount of the levy from the Attorney before scheduling a seizure date.
 - a. The Attorney must provide his/her own movers.
 - b. If a levy was not conducted prior, advise the Attorney that the HCSO will need to conduct a levy & leave first.
 - c. Any property seized must be stored in Harford County and it is the responsibility of the assigned Deputy to ensure that no one else has access to the seized property.
3. It is the responsibility of the Plaintiff/Attorney assigned to handle all bills related to a seizure.
4. When seizing the contents of cash registers, only take cash. Leave behind checks and credit card receipts. The Deputy must complete a form SO-258M for the file with all necessary information and submit to Property Management for a deposit to the County Treasury.
 - a. Once the property has been seized, complete the return of service and disposition forms and return to the Court.

C. Replevins

1. Write up folder and check all paperwork for errors (i.e., Judge's/Clerk's signature, property information & description, contact person, etc.). The instructions should specifically describe the item(s) to be Replevined.
2. Phone the Plaintiff/Attorney and schedule a date and time to attempt the Replevin. Determine who will be receiving the property.
 - a. Make a minimum of two (2) copies of all paperwork. The original shall be returned to the Court upon completion and a copy shall be given to the defendant. A copy shall be attached to the incident in RMS. If someone other than the defendant is in possession of the property, a copy shall be provided to that individual.
 - b. Make sure that all tools or equipment needed to move the property (i.e., tow truck, manpower, moving trucks, etc.) will be supplied by the Plaintiff Attorney.
 - c. It may be necessary to schedule several dates to attempt service.
3. Attempts for service:
 - a. Attempt to contact the Defendant and gain peaceful entry onto the premises.
 - b. Explain the Order for Replevin to the Defendant and present him/her with copies of the documentation.
 - c. Ask to be shown where the item to be Replevined is located and ensure identification with the Plaintiff/Attorney.
 - d. If the defendant does not have possession of property, the deputy shall attempt to ascertain the location of the property. If there is any documentation as to why the defendant does not have the property, copies of the documentation should also be obtained and attached to the incident in RMS and the Return to the Court.
4. Once the item has been identified, the Deputy will complete the Schedule of Replevined Goods. Have all parties sign and date the schedule and give each party a copy. The item(s) may then be removed by the Plaintiff/Attorney.
5. The Deputy will then complete the Return of Service form to the Court.

VI. SHERIFF'S SALE

A. Scheduling

1. The Sheriff Sale will be created in the HCSO RMS.
2. Have the Plaintiff/Attorney advise in writing they request to proceed with a Sheriff's Sale.
3. Advise the Plaintiff/Attorney they must hire an auctioneer and will be responsible for forwarding an approved sale ad to a local newspaper to be advertised. The Plaintiff/Attorney will be responsible for paying for these services upfront, not the HCSO.
4. The Deputy handling the sale must check with the 120 Day Rule to see if the sale can be scheduled within that time frame. If not, advise the Attorney to file a motion for a time extension.

5. The deputy handling the sale will send the Plaintiff/Attorney a copy of the Sheriff's sale ad for approval. When approved, the deputy will make a note in the sale folder that the Plaintiff/Attorney has approved the sale ad.
6. The Plaintiff/Attorney will be responsible for sending the sale ad to an auctioneer to set up a sale date. The Plaintiff/Attorney will advise the Deputy handling the sale who the auctioneer is and provide a contact number.
7. The Plaintiff/Attorney must email the deputy documentation that the auctioneer was hired, and an ad was placed in a local newspaper. The documents must be attached to the incident in RMS.
8. The Plaintiff/Attorney will hire an auctioneer and be responsible for any auctioneer fees.
 - a. A receipt for the auctioneer must be forwarded to the Deputy responsible for the sale so that it may be documented on the Ratification of Sale.
9. Local Advertisement/Newspaper
 - a. The Plaintiff/Attorney must contact a local newspaper to advertise the sale. The Plaintiff/Attorney will be responsible for any and all fees associated with the ad.
 - b. The ad must run for three consecutive weeks.
 - c. A receipt for the ad must be forwarded to the Deputy responsible for the sale so that it may be documented on the Ratification of Sale.
10. The Plaintiff/Attorney must be advised a sale date cannot be set until thirty (30) days after the date the levy or seizure was conducted. The sale cannot take place until at least twenty (20) days after the Notice of Sale has appeared at least once in the local newspaper.
11. A copy of the notice must be posted at the Courthouse. The only exception to this is when dealing with perishable goods, which must have an immediate sale conducted, without notice, if need be.
 - a. The sale notice must include the date & time of the sale, where it will be held, a description of the property to be sold, and the terms of the sale.
 - b. After the sale notice has appeared in the newspaper, make copies of the notice for the file.
 - c. Notify the Attorney that you will need an updated title search of liens on the property prior to the sale date (i.e., mortgage balances, vehicle loans, etc.).
 - d. Notice of Sale

The sale will be public, and the terms will be announced as stated in the Notice of Sale. The property or item to be sold will go to the highest bidder. There must be at least one (1) bidder with a reasonable offer to conduct a sale or the sale must be cancelled. The Sheriff and/or Chief Deputy may reject all offers if they are unreasonably low and may reschedule the sale for a later date.

NOTE: Deputies may not bid at Sheriff Sales, but family members and friends may.

B. Bidding

A starting bid amount will be determined by the Attorney, Auctioneer, and the Sheriff's designee. All known information pertaining to the property will be announced to the bidders (i.e., liens, mortgages, etc.) and will be included in the final purchase price.

1. Personal Property Terms of Sale
 - a. Payment may be made with cashier's check or certified check.
 - b. Payment in full is required at the time of sale.
 - c. **No property may be distributed to the bidder until the Court has ratified the sale.**

2. Real Property Terms of Sale
 - a. A deposit of 10% of the Judgment owed or the real property's value, is due at the time of sale and will be no less than \$5,000.00.
 - b. Bidders must have a government photo ID (i.e., driver's license) and the deposit in hand at the time of the sale.
 - c. The balance is due within ten (10) days of the Court ratifying the sale. All payments must be made using certified check, or cashier's check. Checks should be made payable to **Harford County**.
 - d. **A default notice should always be included in Real Property Notices of Sale:**

In the event of default by said purchaser and at their risk and expense, the Sheriff may declare the deposit forfeited and may resell the premises without a Court Order. The defaulting purchaser will be liable for the costs and expenses of both sales. The forfeited deposit, less expenses, will be credited towards the judgment at the time of ratification. This sale will be considered final after ratification by the Court.

C. Bill of Sale

1. Upon sale of the property, complete a "Bill of Sale" with the buyer's name, address, phone number, item description, and price sold for.
2. The buyer must produce a valid ID and the license number (if using a driver's license as a form of identification) should be noted on the Bill of Sale.
3. A copy will be provided to the buyer. Have the buyer complete a "Purchaser's Affidavit" for all sales and provide him/her with a copy.
4. If a vehicle was sold, an "Auctioneer's Sales Receipt" will need to be completed.
 - a. The Auctioneer will need to sign the receipt and provide the buyer with a copy.
 - b. The buyer will need this receipt in order to have the vehicle titled with the MVA.

D. Ratification

1. After the sale, the Deputy must prepare a report to the Court for ratification per Sheriff's Sale Checklist. (see appendix B)
 - a. Real Property
 - 1) Plaintiff/Attorney must complete a Sheriff's Deed (DC/CV 47) of the property for the new owner.
 - 2) Plaintiff/Attorney will forward completed Sheriff's Deed to the assigned deputy.

- 3) The deputy will be responsible for forwarding the following to the Sheriff for signature.
 - Sheriff's Deed (DC/CV 47)
 - Sheriff's Report of Sale of Real Property (DC/CV 43)
 - Bill Of Sale (DC/CV 42)
 - 4) Once the above documents are signed by the Sheriff, the deputy will organize all of the documents, scan them, and attach them to the Sheriff's Sale case in RMS.
2. The completed documents will be hand delivered as a packet to the Clerk's Office.
 3. After the Court has ratified the sale, the Deputy will receive a copy of the ratification and will then contact the buyer(s) to make arrangements for the pick-up of the purchased property. (If applicable). It is the Deputy's responsibility to follow up with the Court.
 4. The Deputy handling the sale will contact the buyer with the due date for final payment and the terms of the sale.
 - 1) All large payments should be taken to the County Treasury and authenticated. Once the payment has been verified, the Sheriff's Deed may be presented to the buyer.
 - 2) It is the buyer's responsibility to find out from the County Treasury if the property taxes were paid on the real property. If the taxes were not paid, the buyer must pay them and then obtain a Lien Sheet to present to the Department of Land Records.
 - 3) The buyer is responsible for having the deed recorded with the Clerk's Office and the Department of Land Records, along with the appropriate fees.

b. Possession of Real Property

- 1) Once all the terms of the sale have been met, the real property may be turned over to the buyer.
- 2) If the property is still occupied, the occupant must be given a two (2) week notice to vacate the premises. The notice will be posted and mailed by the HCSO.
- 3) On the eviction date, the new owner is responsible for supplying the movers, locksmiths, etc.

E. Distribution of Proceeds

1. The Sheriff may withdraw from the proceeds any unpaid expenses and fees associated with the Sale.
2. The Sheriff will then distribute the balance of the proceeds to the Judgment Creditor, with any remaining balance to be given to the Judgment Defendant.
3. If there is more than one Judgment Creditor:
 - a. Real Property
 - 1) The distribution of the proceeds will start with the mortgage holder and will then go to the first recorded Judgment Creditor, to continue on in order until

the most current Judgment Creditor is reached.

- 2) The first Judgment Creditor does **not** have to be the party who requested the sale.
 - 3) Once all Judgments have been satisfied, any remaining balance will be given to the Judgment Defendant.
- b. Personal Property / Vehicles
- 1) The distribution of the proceeds will begin with the lien holder, if any liens exist on vehicles, and will then go to the Judgment Creditor who first had a levy on the personal property/vehicle that was sold.
 - 2) Proceeds then continue on to any other Judgment Creditors who levied on the same personal property, according to the date on the levy.
 - 3) The Judgment Creditor does not have to be the first to have a recorded Judgment against the Judgment Defendant. **Personal Property cases only.**
- e. Due to the number of deputy hours involved, there will be no refunds issued in regard to Writs of Executions, Writs of Replevins, or Sheriff's Sales.

APPENDIX A

PER MD ANNOTATED CODE 7-402

PERSONAL PROPERTY POUNDAGE FEES

3% of the first \$5,000.00 2%

of the second \$5,000.00

1% of any amount above \$10,000.00

Minimum of \$3.00 Maximum of \$500.00

REAL PROPERTY POUNDAGE FEES

1.5% of the first \$5,000.00

1% of the second \$5,000.00

.5% of any amount above \$10,000.00

Minimum of \$1.50 Maximum of 250.00)