



ATTACHMENTS & ORDERS OF SEIZURE

✓ new: rescinds: amends:		cross-reference: NYSSA Basic Civil manual & NY Consolidated Laws, Civil Practice and Rules accreditation standards: NYSLEAP Standard(s): 8.13
effective date: September, 2020	amend date:	

I. PURPOSE

The function of an attachment is to seize and encumber property, in a pending action, which may be used to satisfy a judgment. The final judgment will usually be a money judgment. Property attached can be liquidated to satisfy the money judgment. Personal and real property can be attached.

The function of an order of seizure is to seize specified items of personal property whose ownership and possession is disputed. A final judgment will usually direct the disposition of the property to a specified party

II. POLICY

The Sheriff's Office realizes the importance of the safekeeping of seized property and the detailed inventories which must be maintained. Safekeeping by non-office persons or agencies will not relieve the Sheriff's Office of liability. Only person and agencies which have secure storage facilities, adequate manpower, environmental controls and sufficient insurance coverage are permitted to hold property seized by the Sheriff's Office.

III. DEFINITIONS

Order of Attachment: A provisional remedy, before judgment, where property may be taken into custody pending the outcome of the action in court. It can be used as security for the judgment creditor for any judgment that may be awarded, or to allow the court to exercise jurisdiction over the judgment debtor when he cannot be served with a summons.

Provisional Remedy: Is used to protect the parties' rights during the course of an action.

Seizure: The act of taking into possession any property by virtue of a court order to satisfy a judgment. Used to test the right of possession of specific property.

Undertaking: A bond the judgment creditor must post in a total amount fixed by the court, not less than five-hundred (\$500.00) dollars to cover attorney costs and damages in cases where the judgment debtor wins.

IV. ORDERS OF ATTACHMENT

A. Operational Procedures

1. The Civil Division will time stamp and log the paperwork and assign a docket number for all orders and record that number on the papers for service. Check order for court index number, undertaking and garnishee and type of service requested.
 - a. Obtain original order or clerk certified copy and two (2) attorney certified copies for each levy.
 - b. Collect payment for fees and expenses up front.
2. The attorney of record must file the original with the clerk of the court within ten (10) days of the granting of order, otherwise the order will lapse. See NYSCPLR Sec. 6212 (c).
3. The attorney of record will need to:
 - a. Supply the Sheriff's Office with copy of affidavit upon which the order was issued. Often, the affidavit supplies useful information such as addresses and estimated values of properties.
 - b. Supply a certified copy of the undertaking.
 - c. Supply a letter of instruction listing:
 - Type of service requested (Levy by service or seizure).
 - Necessity of removal of property from the premises or placing property under custodial care.
4. The attorney of record should also be advised to supply this office with any subsequent orders, etc., so that we know if levy has lapsed or not.
5. Preparation for levy:
 - a. Levy by service: Is made by serving copy of the order on the judgment debtor or garnishee in the same manner as a summons.
 - Service can be made regardless of who possessor or property is and without regard to whether the property is tangible or intangible.
 - b. Levy by seizure: Is made by taking into actual custody the property capable of delivery. This is done only at the direction of the attorney of record or judgment creditor, and upon furnishing the Sheriff's Office indemnity as set by the court.
 - Make sure the judgment creditor is aware that it is their obligation to provide advance expenses for moving and storage of all property seized.
 - The Civil Division will contact the moving company requested by judgment creditor and set up any time for removal of property.

- When executing the order, obtain a copy of the inventory completed by the moving and storage company.
 - When taking any property into the Sheriff's custody for security and storage list the property on the inventory form.
 - Upon taking actual custody the Sheriff's Office must then serve a copy of the order of attachment upon the person from whom we took possession.
6. The order of attachment can be served with or without a summons being served. It is a good idea to have the attorney of record provide proof of service of the summons, if the Sheriff's Office is not asked to serve it. The summons must be served within sixty (60) days of the judge granting the order of attachment, or the order will lapse. Make this proof a part of our file.
 7. Retain property until further order of the court or judgment creditor and all fees and expenses are paid. See NYCPLR Sec. 6218 (a).
 8. Life of Levy:
 - a. Life of the levy is ninety (90) days, unless extended by:
 - Taking custody of property within ninety (90) days;
 - Court order extending the life of the levy;
 - Judgment creditor starts a special proceeding to compel payment or delivery to the Sheriff's Office.
 9. If the judgment debtor refuses to turn over property, it is the judgment creditor's (plaintiff's) responsibility to start a special proceeding to force delivery of property to the Sheriff's Office.
 - a. The judgment debtor (plaintiff) can direct the Sheriff's Office to return or leave the property in the possession of the debtor, as long as they request this in writing and it does not conflict with the court order.
 10. Make an inventory of all levied property and file the inventory with the court within fifteen (15) days after levy.
 11. An Order of Attachment may be terminated by discharging, vacating, or annulment. Vacating and discharging must be done by court order. An annulment arises without intervention of the court when:
 - a. The actions in which the order was granted abates or is discontinued.
 - b. A judgment is entered in favor of the judgment creditor and is fully satisfied.
 - c. A judgment is entered in favor of the judgment debtor.
 - If this occurs the judgment creditor may be granted a stay and may eventually obtain a reversal of the judgment in favor of the judgment creditor, the order of attachment would be revived.

- d. Fifteen (15) days after an order of attachment has been vacated or set aside, the Sheriff's Office must file an inventory of the property seized, an estimate of the value of all property levied upon and the names and addresses of all persons served.
12. A return is not required by article 62 of the NYSCPLR, unless ordered by the court. See NYSCPLR Sec. 6225.
13. All necessary reports and forms will be completed and filed with the Civil Division.

V. **ORDERS OF SEIZURE**

A. Operational Procedures

1. The judgment creditor will deliver to the Sheriff's Office the paperwork on which the order of seizure was granted. This normally includes the judgment creditor's affidavit and undertaking, along with the order of seizure. Where the action has not yet been commenced, the judgment creditor shall also deliver the summons and complaint for service upon the judgment debtor. See NYSCPLR Sec. 7102 (a).

The order of seizure shall include the following:

- a. Index number and date of filing with the court clerk.
 - b. A clear specific description of the property to be seized and value of such property.
 - c. The complete address of where property can be found.
 - d. Signature of judge.
 - e. Check the paperwork and determine if a "break and enter" clause is included in the order.
2. Obtain the original order of the court clerk – certified copy and two (2) attorney certified copies of the order.
 3. Log in and assign a docket number to the order of seizure.
 4. All fees and expenses shall be collected from the judgment creditor to pay for moving and storage of the property to be seized. Expenses for storage should be for the minimum of ten (10) days.
 5. The Sheriff's Office will contact the moving and storage companies that are requested by the judgment creditor. Date and time for removal and transport of the property to storage will be figured by the office.
 - a. Obtain a copy of the inventory which will be completed by the movers.

- b. Complete a Sheriff's Office *Property/Evidence Custody Report* for any property turned directly over to the office for safekeeping. (i.e., jewelry, firearms, computer software etc.)
 - Keep a copy of all forms and reports with the original judgment file.
6. Methods of enforcing an Order of Seizure:
- a. Seizure by service: If the order of seizure does not include a "break and enter" provision, the court may grant a restraining notice against the judgment debtor. If any of the property to be seized is a vehicle, aircraft or vessel, the restraining notice will state that this property must not be removed from New York State. If the property is some other form of personal property, the restraining notice will allow the property that is to be seized to be left at its present location. The restraining notice will prohibit the transfer, sale, pledge, assignment, or any other disposition of the seized property by the judgment debtor.
 - b. Seizure of the property:
 - Order of seizure will be served upon the judgment debtor, or person in possession of property to be seized. Order will be served in the same manner as a summons, unless the court order states otherwise.
 - Seize the property named in the order. This property must be at a location where we have lawful authority to be or can gain authorization. Get permission to enter premises to make seizure.
 - When property is taken into our custody, processing, security and storage will be in accordance with Office procedures.
 - c. Seizure with a "Break and Enter" provision:
 - A clause may be provided that allows for the breaking into and searching of any place where property might be found. See NYSCPLR Sec. 7102 (d)(1). When we execute the order make sure there is reason to believe the property to be seized is in the premises.
 - Judgement creditor is reasonable for securing a locksmith and coordinating a time to be at the location where the property is located. Locks may only be changed under our direction.
7. If the order of seizure was granted with notice to the debtor, the seized property must be held in storage for at least ten (10) days. If after ten days, the defendant has not established a right to reclaim the property by a court order, the Sheriff's Office will turn property over to judgment creditor and have them sign a release form.
8. If the order of seizure was granted without notice to the debtor, the judgment creditor must make a motion for confirmation, with five (5) days after order has been served. If the motion is not made the order becomes void, no further seizures can be made and seizure made must be vacated and the property returned to debtor.

9. A third party may claim rights to the seized property, through the court. If this occurs the Sheriff's Office must be served with notice of the action, prior to the expiration of then ten (10) days required to hold property.
10. A return of an order of seizure must be filed within twenty (20) days after delivery of the seized property. All papers and an affidavit of action taken by the Sheriff's Office must be filed with the return. If the order is executed and not all the property listed is recovered, the same order can be used to re-execute on remaining property before entry of another judgment, unless the court orders otherwise. See NYCPLR Sec. 7104.
11. All copies of reports documenting enforcement of the order of seizure will be filed with the Civil Division.

V11. MISCELLANEOUS

1. Due to the confiscatory nature of attachments and orders of seizure it is very important that all statutory requirements are followed precisely. Personnel must read and review each new order (and associated papers) to insure statutory compliance and prompt, professional execution. The procedures contained herein and in the NYSSA manuals and any office orders must be obeyed to insure fair and proper administration.
2. Motor Vehicles, Mobile Homes, and Vessels
 - a. During the course of any seizure, these items, must be subjected to a thorough search for inventory purposes. Remember, we can only seize the property described in the order and should carefully note any items which are not part of the order and either direct the defendant (or other owner) to take custody of them at the time of seizure, if such person is not present at the seizure, to cause those items to be delivered to the owner.
 - b. The *Vehicle Removal Form* should be used, noting the condition of the vehicle. The standard *Property/Evidence Custody Report* should be used to document all items taken into the custody of the Sheriff's Office.

Attachments:

- A. *Sheriff's Office Property/Evidence Custody Report*
- B. *Sheriff's Office Vehicle Removal Form*

By Order Of



Derek Osborne
Sheriff