

How to Collect a Judgment in Florida Under the New Judgment Lien Law

How do I Collect a Judgment?

If you win a lawsuit for money, you will get copy of the Court's judgment stating the amount of money the losing party must pay to you. The losing party is called the *judgment debtor*, and you, the winner, are called the *judgment creditor*.

If the judgment debtor does not pay, you are entitled to get the sheriff to seize the judgment debtor's property. The seizing of property by the sheriff is called a *levy*. Once the sheriff has levied on the property, the sheriff will then sell it, and pay you out of the money the sheriff receives from the sale. This process is called *execution*. There are a number of steps you must take.

What steps do I have to take?

Step 1. Once you get your judgment, you should first obtain a *judgment lien* by recording a *Judgment Lien Certificate* with the Department of State. This is not always crucial, but it is a very good idea. We will explain below why it is a good idea and how you do it.

Step 2. In order to get the sheriff to levy upon (to seize) the judgment debtor's property, you must first locate the property. The sheriff won't do this for you. Remember that there are many kinds of property the sheriff can seize. Land and buildings are called *real property*. Movable things, like cars, boats, furniture, and jewelry are called *personal property*.

There are some kinds of property the sheriff cannot levy on. The main kind of property the sheriff cannot seize is a person's home. A person's homestead is *exempt* from execution. The judgment debtor may also select personal property worth up to \$1,000, and one motor vehicle worth up to \$1,000, as exempt property. Only people have exemptions. If your judgment is against a corporation or a partnership, the sheriff can seize all of its property. Of course, the sheriff can only levy on property the judgment debtor truly owns – not property owned by somebody else, such as leased property.

Step 3. Once you have located property the sheriff can seize, you take your judgment to the Clerk of the Court that issued the judgment and ask for a document called a *Writ of Execution*. This tells the sheriff to seize property of the judgment debtor to satisfy your judgment. You then deliver the writ to the sheriff's office in the county in which the property is located. You must also give the sheriff written instructions, called *Instructions for Levy*. These instructions describe the property, and tell the sheriff where it is located. The sheriff will require you to deposit some money to pay the sheriff's fees and costs. You will get your deposit back if the execution is successful.

Step 4. Before the property can be sold, you have to check the Department of State's internet website, at www.sunbiz.org, to see if there are any judgment liens filed under the name of the Judgment Debtor. You must also check for creditors who have filed UCC security interests in the name of the Judgment Debtor at www.floridaucc.com. You must notify all of these people of the time and place of the sale. You then give the sheriff a signed affidavit, on which you provide the information contained in all the judgment lien certificates filed against the Judgment Debtor.

Step 5. Once the notices have been sent, the sale must be properly advertised in a local newspaper. Then, at the designated time and place, the sheriff will sell the property at a public auction. You can bid at the auction if you want to. The highest bidder for cash in hand pays the price to the sheriff and becomes the owner of the property.

Step 6. The sheriff will pay out the money received from the sale in this order: First, the sheriff pays the sheriff's costs, and if the sale price covers these costs, you will get your deposit back. Second, the sheriff pays you \$500 for your costs (whether you spent that much or not). Third, if somebody obtained a Judgment Lien before you did, the sheriff pays that person before paying you. If others have filed before you, the sheriff pays everybody in the order of filing. If the sheriff runs out of money before getting to you, you get nothing more. This explains why it is such a *good idea* to obtain a judgment Lien as soon as possible. If no judgment liens have ever been filed, the sheriff will pay

you first, and anything left over will go back to the judgment debtor. But it's still a good idea to file as soon as possible. If you don't, there is always a chance that somebody might file during the execution process and come in ahead of you. IMPORTANT: If you previously delivered a writ of execution to a sheriff, you cannot rely on that. You *must file* a judgment lien certificate before October 1, 2003, in order to hold that place in line.

How do I obtain a Judgment Lien on the Debtor's Personal Property?

You can obtain a judgment lien on all of the judgment debtor's personal property located anywhere in the state by filing a Judgment Lien Certificate with the Department of State. To get the proper form you must go on the internet to the Department's website: www.sunbiz.org. You can either download the form from the website or have it mailed to you. Once you have filled out the form, you can either file it and pay the filing fee electronically, or mail it to the Department with the filing fee. CAUTION: These liens don't last forever. They lapse, meaning they disappear, after 5 years. If there are liens ahead of you, you will move toward the front of the lines as they lapse. But your lien will eventually lapse, too. So don't be lazy waiting for somebody else to levy on the debtor's property for you. After 5 years, you can file against and get another judgment lien, but if others have filed after your first filing, you will go to the end of the line.

How do I obtain a Judgment Lien on the Debtor's Real Property?

You can obtain a judgment lien on the judgment debtor's real property by recording a certified copy of your judgment in the real estate records of the count in which the property is located. Such liens are not recorded with the Department of State. These liens last for 10 years and they can be continued for another 10.

You can download forms on the internet at www.sunbiz.org or call the Department of State, Division of Corporations, Judgment Liens Section, at 850-245-6039.