

STATE OF NEW YORK

7440

2017-2018 Regular Sessions

IN ASSEMBLY

April 25, 2017

Introduced by M. of A. ABINANTI -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to making service upon a financial institution of orders of attachment and notices and orders in aid of enforcement of judgments effective upon any account as to which the institution is a garnishee

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision (a) of section 5222 of the civil practice law
2 and rules, as amended by chapter 409 of the laws of 2000, is amended to
3 read as follows:

4 (a) Issuance; on whom served; form; service. A restraining notice may
5 be issued by the clerk of the court or the attorney for the judgment
6 creditor as officer of the court, or by the support collection unit
7 designated by the appropriate social services district. It may be served
8 upon any person, except the employer of a judgment debtor or obligor
9 where the property sought to be restrained consists of wages or salary
10 due or to become due to the judgment debtor or obligor. It shall be
11 served personally in the same manner as a summons or by registered or
12 certified mail, return receipt requested or if issued by the support
13 collection unit, by regular mail, or by electronic means as set forth in
14 subdivision (g) of this section. It shall specify all of the parties to
15 the action, the date that the judgment or order was entered, the court
16 in which it was entered, the amount of the judgment or order and the
17 amount then due thereon, the names of all parties in whose favor and
18 against whom the judgment or order was entered, it shall set forth
19 subdivision (b) and shall state that disobedience is punishable as a
20 contempt of court, and it shall contain an original signature or copy of
21 the original signature of the clerk of the court or attorney or the name
22 of the support collection unit which issued it. Service of a restraining
23 notice upon a department or agency of the state or upon an institution

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 under its direction shall be made by serving a copy upon the head of the
2 department, or the person designated by him or her and upon the state
3 department of audit and control at its office in Albany; a restraining
4 notice served upon a state board, commission, body or agency which is
5 not within any department of the state shall be made by serving the
6 restraining notice upon the state department of audit and control at its
7 office in Albany. Service at the office of a department of the state in
8 Albany may be made by the sheriff of any county by registered or certi-
9 fied mail, return receipt requested, or if issued by the support
10 collection unit, by regular mail. Service of a restraining notice upon
11 a financial institution shall be made by serving the institution's main
12 office or any office of the financial institution.

13 § 2. Subdivision (b) of section 5225 of the civil practice law and
14 rules, as amended by chapter 388 of the laws of 1964, is amended to read
15 as follows:

16 (b) Property not in the possession of judgment debtor. Upon a special
17 proceeding commenced by the judgment creditor, against a person in
18 possession or custody of money or other personal property in which the
19 judgment debtor has an interest, or against a person who is a transferee
20 of money or other personal property from the judgment debtor, where it
21 is shown that the judgment debtor is entitled to the possession of such
22 property or that the judgment creditor's rights to the property are
23 superior to those of the transferee, the court shall require such person
24 to pay the money, or so much of it as is sufficient to satisfy the judg-
25 ment, to the judgment creditor and, if the amount to be so paid is
26 insufficient to satisfy the judgment, to deliver any other personal
27 property, or so much of it as is of sufficient value to satisfy the
28 judgment, to a designated sheriff. Costs of the proceeding shall not be
29 awarded against a person who did not dispute the judgment debtor's
30 interest or right to possession. Notice of the proceeding shall also be
31 served upon the judgment debtor in the same manner as a summons or by
32 registered or certified mail, return receipt requested. The court may
33 permit the judgment debtor to intervene in the proceeding. The court may
34 permit any adverse claimant to intervene in the proceeding and may
35 determine his or her rights in accordance with section 5239. Service of
36 an order to show cause and petition or notice of petition and petition
37 commencing a special proceeding pursuant to this subdivision upon a
38 financial institution shall be made by serving the institution's main
39 office or any office of the financial institution.

40 § 3. Section 5227 of the civil practice law and rules, as amended by
41 chapter 532 of the laws of 1963, is amended to read as follows:

42 § 5227. Payment of debts owed to judgment debtor. Upon a special
43 proceeding commenced by the judgment creditor, against any person who it
44 is shown is or will become indebted to the judgment debtor, the court
45 may require such person to pay to the judgment creditor the debt upon
46 maturity, or so much of it as is sufficient to satisfy the judgment, and
47 to execute and deliver any document necessary to effect payment; or it
48 may direct that a judgment be entered against such person in favor of
49 the judgment creditor. Costs of the proceeding shall not be awarded
50 against a person who did not dispute the indebtedness. Notice of the
51 proceeding shall also be served upon the judgment debtor in the same
52 manner as a summons or by registered or certified mail, return receipt
53 requested. The court may permit the judgment debtor to intervene in the
54 proceeding. The court may permit any adverse claimant to intervene in
55 the proceeding and may determine his or her rights in accordance with
56 section 5239. Service of an order to show cause and petition or notice

1 of petition and petition commencing a special proceeding pursuant to
2 this section upon a financial institution shall be made by serving the
3 institution's main office or any office of the financial institution.

4 § 4. Subdivision (a) of section 5232 of the civil practice law and
5 rules, as amended by chapter 59 of the laws of 1993, is amended to read
6 as follows:

7 (a) Levy by service of execution. The sheriff or support collection
8 unit designated by the appropriate social services district shall levy
9 upon any interest of the judgment debtor or obligor in personal property
10 not capable of delivery, or upon any debt owed to the judgment debtor or
11 obligor, by serving a copy of the execution upon the garnishee, in the
12 same manner as a summons, except that such service shall not be made by
13 delivery to a person authorized to receive service of summons solely by
14 a designation filed pursuant to a provision of law other than rule 318.

15 Service upon a financial institution shall be made by serving the insti-
16 tution's main office or any office of the financial institution.

17 In the event the garnishee is the state of New York, such levy shall be made in
18 the same manner as an income execution pursuant to section 5231 of this
19 article. A levy by service of the execution is effective only if, at

20 the time of service, the person served owes a debt to the judgment
21 debtor or obligor or he or she is in the possession or custody of prop-
22 erty not capable of delivery in which he or she knows or has reason to
23 believe the judgment debtor or obligor has an interest, or if the judg-
24 ment creditor or support collection unit has stated in a notice which
25 shall be served with the execution that a specified debt is owed by the
26 person served to the judgment debtor or obligor or that the judgment
27 debtor or obligor has an interest in specified property not capable of
28 delivery in the possession or custody of the person served. All property
29 not capable of delivery in which the judgment debtor or obligor is known
30 or believed to have an interest then in or thereafter coming into the
31 possession or custody of such a person, including any specified in the
32 notice, and all debts of such a person, including any specified in the
33 notice, then due or thereafter coming due to the judgment debtor or
34 obligor, shall be subject to the levy. The person served with the
35 execution shall forthwith transfer all such property, and pay all such
36 debts upon maturity, to the sheriff or to the support collection unit
37 and execute any document necessary to effect the transfer or payment.
38 After such transfer or payment, property coming into the possession or
39 custody of the garnishee, or debt incurred by him, or her shall not be
40 subject to the levy. Until such transfer or payment is made, or until
41 the expiration of ninety days after the service of the execution upon
42 him or her, or of such further time as is provided by any order of the
43 court served upon him or her, whichever event first occurs, the garnish-
44 ee is forbidden to make or suffer any sale, assignment or transfer of,
45 or any interference with, any such property, or pay over or otherwise
46 dispose of any such debt, to any person other than the sheriff or the
47 support collection unit, except upon direction of the sheriff or the
48 support collection unit or pursuant to an order of the court. At the
49 expiration of ninety days after a levy is made by service of the
50 execution, or of such further time as the court, upon motion of the
51 judgment creditor or support collection unit has provided, the levy
52 shall be void except as to property or debts which have been transferred
53 or paid to the sheriff or to the support collection unit or as to which
54 a proceeding under sections 5225 or 5227 has been brought. A judgment
55 creditor who, or support collection unit which, has specified personal
56 property or debt to be levied upon in a notice served with an execution

1 shall be liable to the owner of the property or the person to whom the
2 debt is owed, if other than the judgment debtor or obligor, for any
3 damages sustained by reason of the levy.

4 § 5. Subdivision (a) of section 6214 of the civil practice law and
5 rules, as amended by chapter 860 of the laws of 1977, is amended to read
6 as follows:

7 (a) Method of levy. The sheriff shall levy upon any interest of the
8 defendant in personal property, or upon any debt owed to the defendant,
9 by serving a copy of the order of attachment upon the garnishee, or upon
10 the defendant if property to be levied upon is in the defendant's
11 possession or custody, in the same manner as a summons except that such
12 service shall not be made by delivery of a copy to a person authorized
13 to receive service of summons solely by a designation filed pursuant to
14 a provision of law other than rule 318. Service upon a financial insti-
15 tution shall be made by serving the institution's main office or any
16 office of the financial institution.

17 § 6. This act shall take effect on the first of January next succeed-
18 ing the date on which it shall have become a law.