

5110

2015-2016 Regular Sessions

I N   S E N A T E

May 1, 2015

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Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to income execution service and levy upon default or failure to serve judgment debtor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivisions (a), (d), (e) and (j) of section 5231 of the  
2     civil practice law and rules, such section as renumbered by chapter 315  
3     of the laws of 1962, subdivision (a) as amended by chapter 532 of the  
4     laws of 1963, subdivision (d) as amended by chapter 183 of the laws of  
5     1990, subdivision (e) as amended by chapter 88 of the laws of 1975, and  
6     subdivisions (e) and (j) as relettered by chapter 829 of the laws of  
7     1987, are amended to read as follows:  
8     (a) Form. An income execution shall specify, in addition to the  
9     requirements of subdivision (a) of section 5230, the name and address of  
10    the person OR ENTITY from whom the judgment debtor is receiving or will  
11    receive money; the amount of money, the frequency of its payment and the  
12    amount of the installments to be collected therefrom; and shall contain  
13    a notice to the judgment debtor that he OR SHE shall commence payment of  
14    the installments specified to the sheriff forthwith and that, upon his  
15    OR HER default, the execution will be served upon the person OR ENTITY  
16    from whom he OR SHE is receiving or will receive money.  
17    (d) Service upon debtor; FIRST SERVICE BY SHERIFF. Within twenty days  
18    after an income execution is delivered to the sheriff, the sheriff shall  
19    serve a copy of it upon the judgment debtor, in the same manner as a  
20    summons or, in lieu thereof, by certified mail return receipt requested  
21    provided an additional copy is sent by regular mail to the debtor. If  
22    service is by mail as herein provided, the person effecting service  
23    shall retain the receipt together with a post office certificate of  
24    mailing as proof of such service.

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

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1 (e) Levy upon default or failure to serve debtor; SECOND SERVICE BY  
2 SHERIFF. If a judgment debtor fails to pay installments pursuant to an  
3 income execution served upon him OR HER for a period of twenty days, or  
4 if the sheriff is unable to serve an income execution upon the judgment  
5 debtor within twenty days after the execution is delivered to the sher-  
6 iff, the sheriff shall levy upon the money that the judgment debtor is  
7 receiving or will receive by serving a copy of the income execution,  
8 indorsed to indicate the extent to which paid installments have satis-  
9 fied the judgment, upon the person OR ENTITY from whom the judgment  
10 debtor is receiving or will receive money. THE INCOME EXECUTION SHALL BE  
11 SERVED personally within [the] ANY county IN WHICH THE PERSON OR ENTITY  
12 FROM WHOM THE JUDGMENT DEBTOR IS RECEIVING OR WILL RECEIVE MONEY HAS AN  
13 OFFICE OR PLACE OF BUSINESS in the same manner as a summons, or by  
14 certified mail return receipt requested, except that such service shall  
15 not be made by delivery to a person authorized to receive service of  
16 summons solely by a designation filed pursuant to a provision of law  
17 other than rule 318.

18 (j) Priority; delivery to another sheriff. Two or more income  
19 executions issued against the same judgment debtor, specifying the same  
20 person OR ENTITY from whom the money is received and delivered to the  
21 same or different enforcement officers shall be satisfied out of that  
22 money in the order in which the executions are delivered to an officer  
23 authorized to levy in the county, town or city in which the debtor  
24 resides or, IN ANY COUNTY IN WHICH THE PERSON OR ENTITY FROM WHOM THE  
25 JUDGMENT DEBTOR IS RECEIVING OR WILL RECEIVE MONEY HAS AN OFFICE OR  
26 PLACE OF BUSINESS, OR where the judgment debtor is a non-resident, the  
27 county, town or city in which he OR SHE is employed. If an income  
28 execution delivered to a sheriff is returned unsatisfied in whole or in  
29 part because the sheriff to whom it was delivered is unable to find  
30 within the county the person OR ENTITY from whom the judgment debtor is  
31 receiving or will receive money, the execution may be delivered to the  
32 sheriff of any county in which such person [may be found] OR ENTITY HAS  
33 AN OFFICE OR PLACE OF BUSINESS. The priority of an income execution  
34 delivered to a sheriff within twenty days after its return by each  
35 previous sheriff shall be determined by the time of delivery to the  
36 first sheriff.

37 S 2. This act shall take effect immediately.