S T A T E O F N E W Y O R K

5110

2015-2016 Regular Sessions

I N S E N A T E

May 1, 2015

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:

Section 1. Subdivisions (a), (d), (e) and (j) of section 5231 of the civil practice law and rules, such section as renumbered by chapter 315 of the laws of 1962, subdivision (a) as amended by chapter 532 of the laws of 1963, subdivision (d) as amended by chapter 183 of the laws of 1990, subdivision (e) as amended by chapter 88 of the laws of 1975, and subdivisions (e) and (j) as relettered by chapter 829 of the laws of 1987, are amended to read as follows:

(a) Form. An income execution shall specify, in addition to the requirements of subdivision (a) of section 5230, the name and address of the person OR ENTITY from whom the judgment debtor is receiving or will receive money; the amount of money, the frequency of its payment and the amount of the installments to be collected therefrom; and shall contain a notice to the judgment debtor that he OR SHE shall commence payment of the installments specified to the sheriff forthwith and that, upon his OR HER default, the execution will be served upon the person OR ENTITY from whom he OR SHE is receiving or will receive money.

(d) Service upon debtor; FIRST SERVICE BY SHERIFF. Within twenty days after an income execution is delivered to the sheriff, the sheriff shall serve a copy of it upon the judgment debtor, in the same manner as a summons or, in lieu thereof, by certified mail return receipt requested provided an additional copy is sent by regular mail to the debtor. If service is by mail as herein provided, the person effecting service shall retain the receipt together with a post office certificate of 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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(e) Levy upon default or failure to serve debtor; SECOND SERVICE BY SHERIFF. If a judgment debtor fails to pay installments pursuant to an income execution served upon him OR HER for a period of twenty days, or if the sheriff is unable to serve an income execution upon the judgment debtor within twenty days after the execution is delivered to the sheriff, the sheriff shall levy upon the money that the judgment debtor is receiving or will receive by serving a copy of the income execution, indorsed to indicate the extent to which paid installments have satisfied the judgment, upon the person OR ENTITY from whom the judgment debtor is receiving or will receive money. THE INCOME EXECUTION SHALL BE SERVED personally within [the] ANY county IN WHICH THE PERSON OR ENTITY FROM WHOM THE JUDGMENT DEBTOR IS RECEIVING OR WILL RECEIVE MONEY HAS AN OFFICE OR PLACE OF BUSINESS in the same manner as a summons, or by certified mail return receipt requested, except that such service shall not be made by delivery to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318.

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

S 2. This act shall take effect immediately.