

# Enforced Collections



# Levy and Sale

**General rule: laws regulating levy and sale by a sheriff in executing judgments are to govern.**

## **Variations:**

- ✿ Levy and sale need not be made by the sheriff.
- ✿ Judgment need not be docketed nor execution be issued for the collector to use levy.
  - ✿ The governing body's order for the collection of taxes should have the force and effect of a judgment and execution.

# Levy and Sale

**Tax collectors have authority to make the following statement in their order for the collection of taxes:**

✿ “And this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real and personal property of such taxpayers.”

✿ This language provides the force and effect of a judgment.

✿ The power to seize property without a court order is extraordinary.

# Levy and Sale

✿ Who should be qualified to make the levy?

✿ Tax Collector

✿ Properly appointed Deputy Collector

✿ Sheriff

✿ Municipal policeman (municipal taxes)

✿ The appropriate governing body should authorize by resolution the tax collector to call on officers other than tax collectors and deputy collectors.

# Levy and Sale

- ✿ Advisable to furnish adequate written documentation to the officer that the tax collector intends to call.
  - ✿ This document serves as the “execution”.
  - ✿ This execution can be directed against personal property only.
- ✿ Usually tax collectors just ask for a law enforcement officer to accompany them.
- ✿ Tax collectors generally cannot levy outside of their jurisdiction.

# Seizing the Property

✿ **Physically seize the property and remove it from the custody of the taxpayer.**

✿ **If the property can be moved, simply posting a notice is insufficient.**

✿ **Costs of maintaining the levy should be added to the taxes and recovered from the proceeds.**

✿ **Private security guard to protect the levy.**

✿ **Towing and storage costs.**

✿ **Moving and storage costs.**



# Vehicle Seizure Issues

- ✿ You take the sheriff with you to seize a vehicle.
- ✿ You find the vehicle, locked.
- ✿ You are unable to locate the owner.
- ✿ How do you handle the towing of the vehicle?

✿ How do you inventory the assets that are inside the vehicle?



# Vehicle Seizure Issues

What if.....

✿ While taking inventory of the contents of the vehicle, you find contraband?





# Levying on a Business

- ✿ Attempt to levy on one or two items of high value owned by the business.
  - ✿ Cash register, computer equipment, copiers, etc.
- ✿ If none (or the items are encumbered with security interests) levy on the inventory of the business.
  - ✿ Close the business.
  - ✿ Post notices of the levy.
  - ✿ Padlock the doors or change the locks.
- ✿ Collector is responsible for the security of the property.

# Levying on a Business

- ✿ Tax collectors may **NOT** break and enter the outer door to make a levy.
  - ✿ Does not apply to those areas where the taxpayer has no right of privacy.
    - ✿ Business, public streets, public parking lots.
- ✿ Collectors may use “reasonable force” to seize the property and complete the levy.
  - ✿ If the taxpayer interferes, leave and return with a law enforcement officer.
    - ✿ Criminal offense to interfere with a collector who is making a levy.

# Levy Scenario

Di Fara Pizza Parlor is 2 years delinquent on their business personal property taxes.



# Levy Scenario

- ✿ You have attempted all other enforcement measures without success.
- ✿ Being a savvy tax collector, you decide to levy during lunchtime, their busiest time of day.
- ✿ **What asset do you levy on?**
  - Business Assets?
  - Cash Register?



# Care of property in custody after Levy

- ✿ General rule: after levying on property collectors are responsible for its care.
  - ✿ Collectors are liable for loss, damage, or destruction whenever the loss is caused by their lack of care.
- ✿ Collectors should take a **COMPLETE** inventory of the property levied on and also describe its condition.
  - ✿ Photographs & videotape with date stamp.
- ✿ Costs of caring for the property under levy are added to the taxes and deducted from the proceeds of the sale.

# Advertisement of Sale under Levy

Duty of the collector to advertise and sell the property levied on, or as much of it as may be necessary to satisfy the taxes due and costs incurred.

## – G.S. 1-339.51

- ✿ refer to the “execution authorizing the sale” (in this case, the governing body’s order of collection under G.S. 105-321).
- ✿ “designate the date, hour, and place of sale”.
- ✿ “describe the personal property to be sold sufficiently to indicate its nature and quantity, and may add such further description as will acquaint bidders with the nature of the property”.
- ✿ “state that the sale will be made to the highest bidder for cash”.

# Advertisement of Sale under Levy

## – G.S. 105-366(c)

- ✿ advertise the sale “in any reasonable manner and for any reasonable period of time he deems necessary to produce an adequate bid for the property”.
- ✿ This allows for advertisement in newspapers, trade journals, radio, and television if deemed necessary.
- ✿ The costs of additional advertising are to be advanced by the taxing unit and may be recovered from the funds received at the sale.



# Notice to Department of Motor Vehicles

– G.S. 20-114(c) requires an

“immediate report to the Commissioner [of Motor Vehicles] of all motor vehicles reported to him as abandoned or that are seized by him for being used for illegal transportation of alcoholic beverages or other unlawful purposes, and *no motor vehicle shall be sold* by any sheriff, police or peace officer, or by any person, firm, or corporation claiming a mechanic’s or storage lien, or *under judicial proceedings, until a notice on a form approved by the Commissioner shall have been given the Commissioner at least twenty days before the date of such sale.*



# Notice to Department of Motor Vehicles

✿ While there may be some question about whether the collector's levy sale is a sale "under judicial proceedings", nothing is to be gained by arguing the point.

✿ It is wiser to:

✿ honor the requirement

✿ if the levy is on a motor vehicle, extend the advertisement period to twenty days

✿ complete the DMV form (currently LT-101)

✿ send the completed form and a copy of the notice of sale to the Commissioner.

# The Sale

- ✿ Sale may be held at any place within the county or city specified by the collector in the notice of sale.
- ✿ Property to be sold must be present.
  - ✿ May have a bearing on the location of the sale
- ✿ Sale may be held on any day except Sunday.
- ✿ Sale may start no earlier than 10 AM and no later than 4 PM.
  - ✿ Cities & towns of over 5,000 inhabitants may continue until 10 PM.

# The Sale

✿ If a sale cannot be completed within the time allowed, the sale must be continued to a designated time between 10 AM and 4 PM on the following day, other than Sunday.

✿ Such continuance must be announced publicly.

✿ If the property being sold consists of more than one item, collectors can sell it as a whole or in parts.

✿ Collectors may offer the property by each method and then sell it by the method that produces the higher price.

# The Sale

- ✿ No provision in law for resale of personal property; therefore, there is no provision for increased or “upset” bids following the sale.

  - ✿ The sale of the property is final.

- ✿ What if no one shows up?

  - ✿ If no bidders or some other good reason compels the collector to delay the sale, G.S. 1-339.58 permits the postponement “to a day certain not later than six days exclusive of Sunday, after the original date for the sale -

# The Sale

- **1-339.58 continued:**

- (1) When there are no bidders, or
- (2) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or
- (3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day, or
- (4) When he is unable to hold the sale because of illness, or for other good reason, or
- (5) When other good cause exists.”

# Postponement of Sale

**Follow the procedures carefully!**

- ✿ At the time and place of the advertised sale, the collector must publicly announce the postponement.
- ✿ On the same day, a notice of postponement must be attached or entered on the notice of sale posted at the courthouse.
- ✿ Notice must state that the sale is postponed; the hour and date to which it has been postponed; the reason for the postponement; and it must be signed by the collector.

# Priority of Liens

Priority of liens determine the order in which the proceeds of the sale will be distributed.

- ✿ Delinquent taxes owed on the property that is subject of the levy are senior to other liens.
- ✿ Sale extinguishes all junior liens.
- ✿ If surplus proceeds remain after the senior liens have been paid, the junior liens attach in the order of their priority.
- ✿ The purchaser at the sale will take possession of the property free and clear of all liens.

# Priority of Liens

✿ What if no taxes are owed on the property being sold?

✿ If another lien exists, the sale **DOES NOT** extinguish liens senior to the tax lien unless those liens are fully paid.

✿ What if the bid is not enough to cover the costs, taxes and security interest?

✿ IF the notice of sale stated that the sale would be subject to any existing liens, the security interest on the property remains in the hands of the purchaser; and the entire proceeds are applied to costs and the tax lien.



# Priority of Liens

What if the bid is not enough to cover the costs, taxes and security interest?

- ✿ IF the notice of sale **DID NOT** state that the sale would be subject to any existing liens, the proceeds must first be used to pay the senior lien - the security interest - and the costs and taxes will be paid last.
- ✿ If the proceeds are insufficient to pay the security interest completely, the unpaid balance remains a lien in the hands of the new owner.

# Fees

- ✿ Levy and sale fees are governed by G.S 7A-311, which establishes a uniform schedule of civil process fees.
- ✿ Seizure of personal property: all necessary expenses for its care are allowed.
- ✿ Sale of property:
  - ✿ 5% of the first \$500, 2.5% of the amount over \$500; plus the necessary expenses of the sale.
- ✿ Levy and sale fees are treated the same as taxes.

# Delivery of Property Sold

- ✿ Property is to be delivered immediately upon receipt of the purchase price.
- ✿ It is a good practice (though not required) to give the purchaser some written equivalent to a bill of sale upon delivery.

# Disposition of Proceeds

1. Costs of sale and fees.
2. Expenses incurred in caring for the property.
3. Taxes, interest and applicable penalties.
4. Excess funds go to the taxpayer.
  - If unknown or in doubt, the excess is turned over to the Clerk of Superior Court.
  - Clerk would hold the surplus until “rights thereto are established in a special proceeding pursuant to G.S. 1-339.71.

# Possible Penalties

- ✿ A sheriff or *other officer* who makes any sale contrary to the true intent and meaning of this article shall forfeit \$200 to any person suing for it; 1/2 for his own use and 1/2 to the use of the county.
- ✿ When a sheriff or *other officer* returns upon an execution that he has made no sale for want of bidders, he must state in his return the several places he has advertised and offered the property for sale; failure to do so is subject to a fine of \$40.

# Time to Play!

- ❖ County seizes a vehicle for taxes in the amount of \$1000.00
- ❖ The towing fee is \$75.00
- ❖ There is a lien on the vehicle in the amount of \$2,500.00. The lien holder does not try to recover the vehicle, the sale occurs, and the property is sold.
- ❖ Sales price - \$3,000. How much money does the County recover?



**Showcase Showdown!**

# Time to Play!

- ✿ Delinquent Dan owes \$900 in taxes on his vehicle.
- ✿ You search for Delinquent Dan's social security number using his name and address on Accurant.
- ✿ You look Dan up on the Employment Security Commission website and see that he makes very good money at Harris Teeter.
- ✿ You do a wage garnishment on Dan.
- ✿ You receive a response from Harris Teeter that Dan is no longer employed with their company.
- ✿ You find banking information and do a bank attachment to Wachovia.
- ✿ A few weeks later, you receive \$300 from the Wachovia.
- ✿ Since Dan's bill is still not paid in full, you chose to levy on his vehicle.
- ✿ The tow bill for the levy is \$80.00

How much in fees/costs will be added to Dan's bill when the vehicle goes to sale?