



ATTACHMENTS & ORDERS OF SEIZURE		
new: rescinds: ✓ amends:		cross-reference: NYSSA Basic Civil manual & NY Consolidated Laws, Civil Practice and Rules accreditation standards: NYSLEAP Standard(s): 8.13
effective date: September, 2020	amend date: May, 2024	

I. PURPOSE

An order of attachment is a provisional remedy, with the ultimate goal of the plaintiff being the entry of a money judgment. In the meantime, property is levied upon (attached) by the Sheriff thus affording the plaintiff a degree of monetary security while the action is pending. It is, therefore, pre-judgment. It can only be granted by a court.

An order of seizure is a provisional remedy, in that while the court action is pending, it creates for a plaintiff a position of superiority against the defendant and others with respect to the item or items of personal property that are subject of the dispute. It is, therefore, pre-judgment. It can only be granted by a court.

II. POLICY

It shall be the policy of the Tompkins County Sheriff's Office Civil Division to follow the established procedures for serving and enforcing lawfully issued orders of attachments in accordance with the provisions of the New York State Civil Practice Law and Rules (CPLR) Article 62.

It shall be the policy of the Tompkins County Sheriff's Office Civil Division to follow the established procedures for seizing personal property pursuant to a lawfully issued order of seizure in accordance with the provisions of the New York State Civil Practice Law and Rules (CPLR) Article 71.

III. DEFINITIONS

Provisional Remedy: Prejudgment order intended to preserve the status quo until the court issues a final judgment.

Levy: A seizure of property

Garnishee: A person who owes a debt to a judgment debtor, or a person who has property in his possession or custody in which the judgment debtor has an interest

Chattel: Article of personal property

Seizure: The act of taking into possession any property (chattel) by virtue of a court order to determine the right of possession.

Undertaking: A bond which provides compensation resulting from damages from a wrongful seizure. Must be approved by the court.

Indemnity: The liability for a loss shifted from one person held legally responsible to another.

IV. ORDERS OF ATTACHMENT

A. Operational Procedures

1. Civil staff will read and review each new order, and associated papers, to ensure statutory compliance and prompt, professional execution. The procedures contained herein and in the NYSSA manuals and any office orders must be obeyed to ensure fair and proper administration. If the order is in compliance the civil division will accept, date and time stamp, and enter the order of attachment into the civil computer records program. This creates an attachment lien.

2. Requirements Needed

a. Order of Attachment:

- Must be signed by a judge
- Must specify the amount to be secured (principal, interest, costs, fees, poundage, expenses)
- Must include name and address of the plaintiff's attorney
- Must be directed to the Sheriff and direct the Sheriff to levy
- The party to be served must be within Tompkins County
- Must indicate court index number
- The Sheriff's Office will need three sets per party to be served, an original or clerk/attorney certified copy
- The order, affidavit, underlying papers and summons and complaint must be filed with the clerk of the court **within 10 days** of its granting (6212(c))

b. Undertaking:

- May be incorporated into the order or attached to it
- Cannot be for less than \$500.00
- Meets criteria of CPLR 6212(b) and CPLR Art. 25
- Must be approved by the court
- Accounts for the payment of the Sheriff's fee and poundage

c. Plaintiff's Affidavit: A sworn statement by the plaintiff that provides beneficial information regarding property, its whereabouts, value and involved parties. See CPLR 6212(a) for precise contents. The affidavit is not required to be delivered to the Sheriff.

d. Letter of Instruction:

- Identifies parties to be served and their location
- Identifies specific property to be levied upon, its location and instructions as necessary
- Will specify if the Sheriff is to serve the summons & complaint or if the plaintiff will make other arrangements for its service on the defendant and provide proof of service
- Direction on method of levy (service or seizure)
- Includes contact information for service providers if needed (moving, storage, etc.)

e. Summons & Complaint:

- The summons can be served on the defendant before or after the order of attachment is granted. The Sheriff's Office must know whether or not the summons was served prior to the order's delivery to the Sheriff.
 - If the summons has been served, a copy of the affidavit of service of the summons on the defendant should be provided to the Sheriff's Office
 - More likely, if the summons has not yet been served look to see when the order was granted. If 60 days have gone by since the order of attachment was granted, the order is invalid. If it is valid and the Sheriff is to serve, obtain the appropriate fees and number of copies

- f. Fees: Expenses related to service and execution (moving, storage, appraisals, overtime, etc.) of the order of attachment are paid in advance of any activity performed by the Sheriff.

3. Levy: A Levy must occur before final judgment

- a. Levy by Service: The Sheriff shall levy upon any interest of the defendant, or any debt owed to the defendant, by serving a copy of the order of attachment, along with a letter of instruction provided by the Sheriff's Office, upon the garnishee or defendant, in the same manner as a summons.

1. Property not capable of delivery

- Typically, the property sought to be levied upon (bank account, investment instruments, etc.) is in the hands of a garnishee.
- The garnishee is required to transfer the property to the Sheriff "forthwith" or "upon maturity". Plaintiff can make motion for a court ordered extension.
- No poundage or fees can be deducted at this time
- When the value collected is sufficient to satisfy the order of attachment the Sheriff shall notify the defendant and all persons upon whom the order was served.

2. Property capable of delivery

- Should know in advance exactly what property is targeted to be levied upon
 - The order will be served upon the person in possession of the property; the levied upon property will be left in the hands of the garnishee (or, rarely, the defendant)
 - The Sheriff will inform the garnishee that the property is now held by the Sheriff and that the garnishee is simply a custodian and that the levied upon property is not to be touched except upon direction from the Sheriff
 - A detailed inventory will be taken, and property will be tagged. It should be segregated from non-levied property and secured appropriately
 - Garnishee is responsible for transfer of any levied upon property to the Sheriff within the 90-day period. The Sheriff's Office must provide proper storage and security until disposition.
- b. Levy by Seizure: With written direction from the plaintiff the Sheriff will levy by seizing property and taking into his actual custody. The Sheriff's Office shall serve a copy of the order of attachment in the same manner as a summons upon the person from whose possession the property was taken.
- The Plaintiff will furnish indemnity (typically an undertaking) satisfactory to the Sheriff
 - Documentation establishing the defendant's interest in the targeted property should be furnish in advance of any levy
 - When taking property into the custody of the Sheriff's Office, all processing, security and storage shall be in accordance with office procedures. Items being seized will be searched and property will be inventoried. The standard *Property/Evidence Custody Report along with the Vehicle Removal Form* (if the property seized is a vehicle) will be used to document all items taken

4. Garnishee & Sheriff's Inventory

a. Garnishee Statement:

1. Within 10 days (unless otherwise directed by the court), any garnishee served with an order of attachment is required to serve the Sheriff with a statement informing the Sheriff what property is in its custody or control and if any debts are due the defendant by the garnishee. The 10-day period is reduced to 5 days if the order was granted where the defendant is a non-resident, and the attachment is used to gain jurisdiction over it. In this instance the garnishee must serve a copy of its statement directly on the plaintiff in addition to the Sheriff.

b. Sheriff's Inventory:

1. The Sheriff's Office is required to file with the court inventory of property levied upon within 15 days after service of an order of attachment.

5. Confirmation of the Order: The confirmation procedure requires the plaintiff to prove to the court the necessity for the attachment order.

- Only required when the order of attachment is granted without notice (ex parte) to the defendant
- Motion must be made by the plaintiff within 5 days of the levy. The Sheriff's Office must be served with the motion papers. The 5-day period is expanded to 10 days if the attachment order was granted where the defendant is a non-domiciliary or not qualified to do business in New York State.
- The order of attachment granted ex parte must state which confirmation order period is operational
- The Sheriff will comply with court directions

6. Life of the Levy: 90 days; only extended by court order

- If levied property has not been transferred to the Sheriff within the 90 days (or per court order), the levied assets become free of the levy. If levied property has been transferred levy remains valid
- The attachment can be extended without court permission if the garnishee is uncooperative. The plaintiff need only commence a special proceeding within the initial 90-day period

7. Disposition

a. In Favor of the Plaintiff

1. By Court Order: Sheriff's Office will receive direction to pay to the plaintiff a specified sum, less Sheriff fees, poundage, etc.
2. Money Judgment Entered: A property execution can now be issued

b. In Favor of the Defendant:

1. Vacated: When the court determines that the order is not now necessary
 - The Sheriff's Office will require directions for the disposition of the assets levied upon and arrangements associated with the payment of poundage, fees and expenses

2. Annulment:

- Action Abates: court approval for dismissal of the case.
 - Discontinued: parties settle without court intervention
 - Money Judgment: is entered in favor of the plaintiff and it is fully satisfied
 - Judgment in favor of the defendant
8. If a Stay Order is received, the Sheriff's Office is bound to do whatever the order requires. Bankruptcy filing is an automatic stay.
 9. A final return must be made by the Sheriff's Office to the court. This will include information about the details of the disposition of any property. The original should go to the clerk of the court, with a copy to the plaintiff and one to remain in the Sheriff's Office file.
 10. Real Property: After the order of attachment has been granted, the plaintiff will prepare a notice of attachment. The Sheriff's Office will levy by filing the notice of attachment with the county clerk.
 - Rule regarding service of summons, filing the order of attachment with the clerk of the court, Sheriff's Office inventory, confirmation procedures (if ex parte) and final dispositions still apply same as personal property levies

V. ORDERS OF SEIZURE

A. Operational Procedures

1. Civil staff will read and review each new order, and associated papers, to ensure statutory compliance and prompt, professional execution. The procedures contained herein and in the NYSSA manuals and any office orders must be obeyed to ensure fair and proper administration. If the order is in compliance the civil division will accept, date and time stamp, and enter the order of seizure into the civil computer records program.
2. Requirements Needed:
 - a. Order of Seizure:
 - Must be signed by a judge
 - Have names of the parties in the case
 - The papers upon which the order was granted (order to show cause, notice of petition and petition, or notice motion) must be included.
 - The date the order was granted, and the court index number must be present on order.
 - Order should reference the papers upon which it was granted
 - Order must be directed to the Sheriff. It must specifically direct the Sheriff to "seize the chattel described in the affidavit and if the Sheriff is permitted to "break and enter"

- Order must indicate the courts approval of the undertaking
- If granted ex parte, the order must:
 - State that the plaintiff will move for an order of confirmation
 - Indicate how notice of that motion is to be made to the Sheriff and defendant
 - Specify the time period within which such motion must be made after seizure (not to exceed five days)
- If granted with notice to the defendant the order will:
 - Reference the prior proceeding
- Have the “holding” period instructions
- The Sheriff’s Office will need three original or clerk/attorney certified copies that have the original signature of the certifying party.

b. The Undertaking:

- Must be approved by the court
- Dollar value of the undertaking must be for at least twice the value of the property in question

c. Affidavit: the sworn statement of the plaintiff as to the reason for the proceeding. The affidavit will provide background of the dispute (names and addresses of the defendants or other parties that might be in possession of the chattel along with a clear specific description of the property to be seized).

d. Letter of Instruction: Should explain what is to be done, make Sheriff’s Office aware of time limits, parties involved, addresses, property descriptions, and special instructions.

e. Summons & Complaint

- If the defendant has been served the Sheriff’s Office will get a copy of the proof of service.
- Should include court index number and date of filing with clerk of the court
- No time limit for service, except in regard to the statute of limitations for actions in supreme, county or city court, CPLR 306-b requires service within 120 days of its filing with the clerk of the court

f. Sheriff’s Fees: Payable in advance, minimum of \$137.00

g. Expenses: The Sheriff’s Office will require advances to cover moving and storage costs.

- The Sheriff’s Civil Office will contact the moving and storage company to remove and transport the property for storage.

3. Seizure: Does not create a lien, no sale, no poundage

- The order of seizure along with the papers upon which it was granted, and

the undertaking will be served upon the judgment debtor or person in possession of the property seized

- Papers shall be personally served on each defendant in the same manner as a summons.
 - Seize the chattel in accordance with provisions of the order
 - If the order contains a break and enter provision the Sheriff's Office is authorized to use forcible entry in the place where the chattel may be. Most courts will limit the Sheriff's Office to one specific location. Use prudence and reasonableness
 - When taking property into the custody of the Sheriff's Office, all processing, security and storage shall be in accordance with office procedures. Items being seized will be searched and property will be inventoried. The standard *Property/Evidence Custody Report* along with the *Vehicle Removal Form* (if the property seized is a vehicle) will be used to document all items taken
4. Confirmation Order: An order confirming the order of seizure which ensures all interested parties are given their day in court
- If the order of seizure was granted with notice to the defendant there will be no confirmation order, as the defendant has already had the opportunity to challenge it
 - If the order of seizure was granted ex parte, it is required to state that the plaintiff will move for a confirmation hearing, no more than five days after seizure. The Sheriff's Office will retain custody of the chattel until served with an order of confirmation
 - If the motion is not made within the time period the order of seizure shall be vacated. The Sheriff's Office will wait for court direction before chattel is returned.
5. Life of the Order of Seizure: Valid and enforceable until a judgement is entered, unless the court orders otherwise
6. A Court can modify a procedure or requirement at any time
7. Disposition: when all court procedures and timelines are complied with by all parties and no defendant or third party successfully challenges the seizure, the Sheriff will deliver the seized property to the plaintiff
- If the order was granted ex parte: when the confirmation order is received
 - If the order was granted with notice: 10 days after seizure (or less if so ordered). It is common to see the court direct an immediate turnover of chattel to the plaintiff upon seizure
 - Under other circumstances, specific court direction will be needed
8. Sheriff's Return: The Sheriff's Office shall file with the clerk a return within twenty days after delivery of chattel. The return should include all papers delivered to or served upon the Sheriff's Office and a statement of all action taken. Whomever was awarded possession of the chattel will also be provided with a copy of the return (not the whole file or all of the associated papers).

Attachments:

A. *Sheriff's Office Property/Evidence Custody Report*

B. *Sheriff's Office Vehicle Removal Form*

By Order Of

A handwritten signature in black ink, appearing to read "Derek Osborne".

Derek Osborne
Sheriff