

**THE FLORIDA BAR BUSINESS LAW SECTION BLACK-LINED COMPARISON OF
CHAPTER 56, FLORIDA STATUTES (2014) AND PROPOSED CHANGES.**

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CHAPTER 56

FINAL PROCESS

SECTION 56.010 Definitions and index of definitions.

(1) In this chapter, the term:

(a) “Claimant” means any person other than the judgment debtor who claims any property levied on.¹

(b) “Corporate Judgment Debtor” means any person who is a judgment debtor other than an individual, estate or trust that is not a business trust.

(c) “Judgment Creditor” means the holder of an unsatisfied judgment, order, or decree for the payment of money^[2], including any transferee or any surety having the right to control and collect the judgment under s. 55.13.

¹ This definition is taken from Fla. Sta. § 56.16.

² See Fla. Stat. § 55.141(1) (“All judgments and decrees for the payment of money rendered in the courts of this state and which have become final, may be satisfied at any time prior to the actual

(d) “Judgment Debtor” means each person who is liable on a judgment, order, or decree subject to execution under this Chapter 56.[³]

(e) “Levying creditor” means the levying judgment creditor.

(f) “Person” means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.[⁴]

(g) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.[⁵]

SECTION 56.011 Executions; *capias ad satisfaciendum* abolished.

In no case shall a *capias ad satisfaciendum* be issued upon a judgment, nor shall the body of any ~~defendant~~ person be subject to arrest or confinement for the payment of money, except it be for fines imposed by lawful authority.

History.—s. 53, Nov. 23, 1828; RS 1184; GS 1612; RGS 2816; CGL 4503; s. 11, ch. 67-254. Note.—Former s. 55.14.

SECTION 56.021 Executions; issuance and return, alias, etc.

When issued, an execution is valid and effective during the life of the judgment, order, or decree on which it is issued. When fully paid, the officer executing it shall make his or her return and file it in the court which issued the execution. If the execution is lost or destroyed, the party entitled thereto may have an alias, pluries or other copies on making proof of such loss or destruction by affidavit and filing it in the court issuing the execution.

History.—s. 1, Feb. 17, 1833; RS 1187; GS 1615; RGS 2819; CGL 4506; ss. 1, 2, ch. 17904, 1937; CGL 1940 Supp. 4505(1); s. 11, ch. 67-254; s. 298, ch. 95-147. Note.—Former s. 55.16.

[No change] **SECTION 56.031 Executions; form.**

levy of execution issued thereon by....”); *cf.* Fla. Stat. § 55.202(1) (“A judgment lien securing he unpaid amount of any money judgment may be acquired by the holder of a judgment: . . .”);

³ See Fla. Stat. § 726.102(7) (“Debtor’ means a person who is liable on a claim”).

⁴ This definition is taken verbatim from Fla. Stat. § 726.102(10) (definition of “Person”).

⁵ This definition is taken verbatim from Fla. Stat. § 726.102(13) (definition of “Relative”).

All executions shall be dated on the day on which they are issued, shall be directed to all and singular the sheriffs of the state and shall be in full force throughout the state.

History.—s. 1, Feb. 17, 1833; RS 1186; GS 1614; RGS 2818; CGL 4505; s. 11, ch. 67-254. Note.—Former s. 55.17.

SECTION 56.041 Executions; collection and return.

(1) All executions shall be returnable when satisfied, and the officers to whom they are delivered shall collect the amounts thereof as soon as possible and shall furnish the ~~defendant~~ judgment debtor with a satisfaction of judgment. All receipts shall be endorsed on the execution.

(2) All unsatisfied executions in the hands of the sheriff docketed before October 1, 2001, or 20 years after the date of issuance of final judgment upon which the execution was issued may be returned to the court issuing the execution. Upon such return, the clerk of the court of issuance shall provide a receipt to the sheriff submitting the return acknowledging the return of the unsatisfied execution.

History.—s. 2, Mar. 15, 1844; RS 1188; GS 1616; RGS 2820; CGL 4507; s. 11, ch. 67-254; s. 8, ch. 87-145; s. 6, ch. 87-405; s. 4, ch. 2009-215. Note.—Former s. 55.18.

[No change] **SECTION 56.051 Executions; collection when against principal and sureties.**

Where there are executions against principals and sureties, or an execution against a principal and surety or sureties, it shall be the duty of the sheriff or other officer to make the money out of the property of the principal, unless the principal be insolvent or has no property, in which case the execution may proceed against the property of the sureties.

History.—s. 7, Mar. 15, 1844; RS 1189; GS 1617; RGS 2821; CGL 4508; s. 11, ch. 67-254; s. 299, ch. 95-147. Note.—Former s. 55.19.

[No change] **SECTION 56.061 Property subject to execution.**

Lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations,^[6] shall be subject to levy and sale under execution. Likewise, the interest in personal property in possession of a vendee under a retained title contract or conditional sale

⁶ No change has been made to this language to expand rights to other entities that might have certificated interests.

contract shall be subject to levy and sale under execution to satisfy a judgment against the vendee. This shall be done by making the levy on such personal property.

History.—s. 1, Mar. 15, 1844; s. 1, ch. 44, 1845; s. 1, ch. 3917, 1889; RS 1190; GS 1618; RGS 2822; CGL 4509; s. 1, ch. 61-199; s. 11, ch. 67-254. Note.—Former s. 55.20.

SECTION 56.071 Executions on equities of redemption; discovery of value.

On motion made by the ~~party~~ person causing a levy to be made on an equity of redemption, the court from which the execution issued shall order the mortgagor, mortgagee, and all other persons interested in the mortgaged property levied on to appear and be examined about the amount remaining due on the mortgage, the amount that has been paid, the ~~party~~ person to whom that amount has been paid, and the date when that amount was paid so that the value of the equity of redemption may be ascertained before the property is sold. The court may appoint a general or special magistrate to conduct the examination. This section shall also apply to the interest of and personal property in possession of a vendee under a retained title contract or conditional sales contract.

History.—s. 2, ch. 44, 1845; RS 1208; GS 1638; RGS 2842; CGL 4529; s. 1, ch. 61-191; s. 11, ch. 67-254; s. 13, ch. 73-334; s. 52, ch. 2004-11. Note.—Former s. 55.21.

SECTION 56.09 Executions against ~~corporations~~ corporate judgment debtors; generally.

On any judgment against a ~~corporation plaintiff~~ corporate judgment debtor, the judgment creditor may have an execution levied on the current money as well as on the goods and chattels, lands and tenements of said ~~corporation~~ corporate judgment debtor.

History.—s. 4, Feb. 11, 1834; RS 1210; GS 1640; RGS 2844; CGL 4531; s. 11, ch. 67-254. Note.—Former s. 55.23.

SECTION 56.10 Executions against ~~corporations~~ corporate judgment debtors; receivership.

If an execution cannot be satisfied in whole or in part for lack of property of the ~~defendant~~ corporate judgment debtor subject to levy and sale, on motion of the judgment creditor the circuit court ~~in chancery~~ within whose circuit such ~~corporation~~ corporate judgment debtor is or has been doing business, or in which any of its effects are found, may sequester the property, things in action, goods and chattels of the ~~corporation~~ corporate judgment debtor for the purpose of enforcing the judgment, and may appoint a receiver for the ~~corporation~~ corporate judgment

debtor. A receiver so appointed is subject to the rules prescribed by law for receivers of the property of other judgment debtors. His or her power shall extend throughout the state.

History.—s. 1, ch. 1870, 1872; RS 1211; GS 1641; RGS 2845; CGL 4532; s. 11, ch. 67-254; s. 300, ch. 95-147.

Note.—Former s. 55.24.

SECTION 56.12 Executions; levy, forthcoming bond.

If a ~~defendant~~ judgment debtor in execution wants to retake possession of any property levied on, ~~he or she~~ the judgment debtor may do so by executing a bond with surety to be approved by the officer in favor of the ~~plaintiff~~ judgment creditor in a sum double the value of the property retaken as fixed by the officer holding the execution and conditioned that the property will be forthcoming on the day of sale stated in the bond.

History.—s. 3, Mar. 15, 1844; RS 1192; GS 1621; RGS 2825; CGL 4512; s. 11, ch. 67-254; s. 301, ch. 95-147.

Note.—Former s. 55.34.

[No change] **SECTION 56.13 Executions; forfeiture of forthcoming bond.**

Should the execution remain unpaid, and the parties to the bond fail to produce such property by the day specified, said bond shall be returned to the court from which the execution issued, as forfeited; and the clerk, or the court if it has no clerk, shall enter up judgment forthwith against the sureties for the value fixed as aforesaid of the property so bonded, or if the value of the property exceed the amount of the execution, then for the amount of the execution, and execution shall issue therefor. Such proceedings shall not affect the liability of the principal upon the original judgment.

History.—s. 4, Mar. 15, 1844; RS 1193; GS 1622; RGS 2826; CGL 4513; s. 11, ch. 67-254. Note.—Former s. 55.35.

[No change] **SECTION 56.14 Executions upon forthcoming bond; levy.**

No bonds, as hereinbefore provided, shall be allowed to be given for property seized upon the execution on the judgment upon the forfeited bond.

History.—s. 1, ch. 727, 1855; RS 1194; GS 1623; RGS 2827; CGL 4514; s. 11, ch. 67-254.

Note.—Former s. 55.36.

SECTION 56.15 Executions; stay of illegal writs.

If any execution issues illegally, the ~~defendant in execution~~ judgment debtor may obtain a stay by making and delivering an affidavit to the officer having the execution, stating the illegality and whether any part of the execution is due, with a bond with surety payable to ~~plaintiff~~ the judgment

creditor in double the amount of the execution or the part of which a stay is sought conditioned to pay the execution or part claimed to be illegal and any damages for delay if the affidavit is not well founded. On receipt of such affidavit and bond the officer shall stay proceedings on the execution and return the bond and affidavit to the court from which the execution issued. The court shall pass on the question of illegality as soon as possible. If the execution is adjudged illegal in any part, the court shall stay it as to the part but if it is adjudged legal in whole or in part, the court shall enter judgment against the principal and surety on such bond for the amount of so much of the execution as is adjudged to be legal and execution shall issue thereon.

History.—ss. 2, 3, Feb. 15, 1834; RS 1195; GS 1624; RGS 2828; CGL 4515; s. 11, ch. 67-254.

Note.—Former s. 55.37.

SECTION 56.16 Executions; claims of third parties to property levied on.

If any person other than the ~~defendant in execution~~judgment debtor claims any property levied on, ~~he or she~~such claimant⁷ may obtain possession of the property by filing with the officer having the execution an affidavit by ~~himself or herself, his or her~~ the claimant, or the claimant's agent or attorney, that the property claimed belongs to ~~him or her~~ claimant and by furnishing the officer a bond with surety to be approved by the officer in favor of ~~plaintiff~~the judgment creditor in double the value of the goods claimed as the value is fixed by the officer and conditioned to deliver said property on demand of said officer if it is adjudged to be the property of the ~~defendant in execution~~judgment debtor and to pay ~~plaintiff~~the judgment creditor all damages found against ~~him or her~~the claimant if it appears that the claim was interposed for the purpose of delay.

History.—s. 9, Feb. 17, 1833; s. 1, Mar. 16, 1844; RS 1197; GS 1626; RGS 2830; CGL 4517; s. 11, ch. 67-254; s. 302, ch. 95-147. Note.—Former s. 55.39.

[No change] **SECTION 56.17 Executions; duty of officer on claim of third person being filed.**

On receipt of the bond and affidavit the officer shall deliver the property to the claimant and desist from any further proceedings under the execution until the right of property is tried. The officer shall return the execution to the court from which it issued with the affidavit and bond.

⁷ The term “claimant” is used in the next section, section 56.17.

History.—ss. 9, 10, Feb. 17, 1833; RS 1198; GS 1627; RGS 2831; CGL 4518; s. 11, ch. 67-254; s. 303, ch. 95-147.
Note.—Former s. 55.40.

SECTION 56.18 Executions; trial of claims of third persons.

As soon as possible after the return a jury, if not waived, shall be impaneled to try the right of property. If the verdict is in favor of ~~plaintiff~~the judgment creditor and it appears that the claim brought pursuant to Fla. Stat. s. 56.16 was interposed for delay, ~~plaintiff~~the judgment creditor may be awarded reasonable damages, not exceeding 20 percent of the value of the property claimed. If the claimant denies in writing under oath filed at least 3 days before the trial, the correctness of the appraisal of the value of the property by the officer levying the execution, and the verdict is in favor of ~~plaintiff~~the judgment creditor, the jury if not waived, shall fix the value of each item thereof, or of the items covered by such denial.

History.—s. 10, Feb. 17, 1833; RS 1199; GS 1628; RGS 2832; CGL 4519; s. 11, ch. 67-254.
Note.—Former s. 55.41.

SECTION 56.19 Judgments upon claims of third persons.

Upon the verdict of the jury, the court shall enter judgment deciding the right of property, and if the verdict is for ~~plaintiff~~the judgment creditor, awarding a recovery by the ~~plaintiff~~ judgment creditor from the ~~defendant~~claimant and ~~his or her~~claimant's sureties, of the value (as fixed by the officer, or as fixed by the jury if fixed by it) of such parts of the property as the jury may have found subject to execution that were delivered to claimant, and awarding separately such damages as ~~the jury~~ may have awarded under s. 56.18, and of all costs attending the presentation and trial of the claim.

History.—RS 1200; GS 1629; RGS 2833; CGL 4520; s. 11, ch. 67-254; s. 304, ch. 95-147. Note.—Former s. 55.42.

SECTION 56.20 Executions on judgments against third person claimants.

If the execution issued on the judgment is not paid, it shall be satisfied in the usual manner unless on demand of the officer holding it, the principal and surety in the claim bond deliver the property released under the claim bond to the officer and pay him or her the damages and costs awarded to ~~plaintiff~~the judgment creditor. If the property is returned to the officer but damages and costs are not paid, execution shall be enforced for the damages and costs. If part of the property is returned to the officer, the execution shall be enforced for the value, fixed as aforesaid, of that not returned. All property returned shall be sold under the original execution against the judgment debtor.

History.—RS 1201; GS 1630; RGS 2834; CGL 4521; s. 11, ch. 67-254; s. 305, ch. 95-147. Note.—Former s. 55.43.

[No change] **SECTION 56.21 Execution sales; notice.**

Notice of all sales under execution shall be given by advertisement once each week for 4 successive weeks in a newspaper published in the county in which the sale is to take place. The time of such notice may be shortened in the discretion of the court from which the execution issued, upon affidavit that the property to be sold is subject to decay and will not sell for its full value if held until date of sale. On or before the date of the first publication or posting of the notice of sale, a copy of the notice of sale shall be furnished by the sheriff by certified mail to the attorney of record of the judgment debtor, or to the judgment debtor at the judgment debtor's last known address if the judgment debtor does not have an attorney of record. Such copy of the notice of sale shall be mailed even though a default judgment was entered. When levying upon real or personal property, a notice of such levy and execution sale and a copy of the affidavit required by s. 56.27(4) shall be sent by the sheriff to the attorneys of record of all judgment creditors and other lienholders, or to all judgment creditors and other lienholders who do not have an attorney of record, who have acquired a lien as provided in s. 55.10(1) and (2), s. 55.202, s. 55.204(3), or s. 695.01, and whose liens have not lapsed at the time of levy, at the address listed in the judgment lien certificate or other recorded liens, or, if amended, in any amendment thereto, and to all secured creditors who have filed financing statements as provided in part V of chapter 679 in the name of the judgment debtor reflecting a security interest in property of the kind to be sold at the execution sale at the address listed in the financing statement, or, if amended, in any amendment to the financing statement. Such notice shall be made in the same manner as notice is made to any judgment debtor under this section. When levying upon real property, notice of such levy and execution sale and affidavit required by s. 56.27(4) shall be made to the property owner of record in the same manner as notice is made to any judgment debtor pursuant to this section, and shall be made to each other person holding a mortgage or other lien against the real property as disclosed by the affidavit. When selling real or personal property, the sale date shall not be earlier than 30 days after the date of the first advertisement.

History.—s. 3, Feb. 17, 1833; RS 1202; GS 1631; RGS 2835; CGL 4522; s. 11, ch. 67-254; s. 2, ch. 77-462; s. 4, ch. 82-118; s. 10, ch. 94-170; s. 18, ch. 2000-258; s. 12, ch. 2001-154; s. 10, ch. 2005-241; s. 5, ch. 2009-215. Note.—Former s. 55.44.

SECTION 56.22 Execution sales; time, date, and place of sale.

All sales of property under legal process shall take place at the time, date, and place advertised in the notice of the sheriff's sale on any day of the week except Saturday and Sunday and shall continue from day to day until such property is disposed of. Property not effectively disposed of at the initial sheriff's sale may be readvertised, as provided in s. 56.21, upon receipt of an additional deposit to cover costs incurred in connection with the maintenance of the property under legal process. In the event no additional deposit is received by the sheriff, the property may be returned to the ~~defendant~~judgment debtor; if the ~~defendant~~judgment debtor refuses to accept such property, the property may be returned to a third party, such as a lienholder, upon presentation of a proper court order directing such return. If none of the above can be accomplished, such property shall be disposed of as unclaimed or abandoned.

History.—s. 2, ch. 3256, 1881; RS 1203; GS 1632; RGS 2836; CGL 4523; s. 1, ch. 61-104; s. 11, ch. 67-254; s. 5, ch. 82-118; s. 7, ch. 87-405; s. 11, ch. 94-170. Note.—Former s. 55.45.

[No change] **SECTION 56.25 Execution sale; bill of sale or deed.**

When a sale is made under an execution, the officer making the sale shall execute and deliver to the purchaser a deed or bill of sale to the property on payment of the purchase money and the cost of the deed or bill of sale.

History.—s. 6, Feb. 17, 1833; RS 1205; GS 1634; RGS 2838; CGL 4525; s. 11, ch. 67-254. Note.—Former s. 55.48.

SECTION 56.26 Executions; mandamus to force levy and sale.

When an officer holds an unsatisfied execution and refuses to levy on property liable thereunder and on which it is his or her duty to levy or having levied, refuses to advertise and sell the property levied on, ~~plaintiff in execution~~the judgment creditor is entitled to an alternative writ of mandamus requiring the officer to levy such execution or advertise and sell the property levied on, or both, as the case may be.

History.—s. 1, ch. 4914, 1901; GS 1635; RGS 2839; CGL 4526; s. 1, ch. 61-330; s. 11, ch. 67-254; s. 306, ch. 95-147. Note.—Former s. 55.49.

SECTION 56.27 Executions; payment of money collected.

(1) All money received under executions shall be paid, in the order prescribed, to the following: the sheriff, for costs; the levying creditor in the amount of \$500 as liquidated expenses; and the priority lienholder under s. 55.10(1) and (2), s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an affidavit required by subsection (4), or ~~his or her~~ the levying creditor's attorney, in satisfaction of the judgment lien, if the judgment lien has not lapsed at the time of the levy. The receipt of the attorney shall be a release of the officer paying the money to him or her. If the name of more than one attorney appears in the court file, the money shall be paid to the attorney who originally commenced the action or who made the original defense unless the file shows that another attorney has been substituted.

(2)(a) If property sold under execution brings more than the amount needed to satisfy the provisions of subsection (1), the surplus shall be paid in the order of priority to any judgment lienholders whose judgment liens have not lapsed, unless the affidavit required by subsection (4) discloses that the property is also subject to any recorded mortgage, financing statement, tax warrant, or other lien, other than a judgment lien, which is junior in priority to the levying creditor's judgment lien. For the purpose of the sheriff's distribution of the surplus to judgment lienholders under this paragraph, priority of judgment liens on personal property shall be based on the effective date of the judgment lien acquired under s. 55.202, s. 55.204(3), or s. 55.208(2), and priority of judgment liens on real property shall be based on the effective date of the judgment lien acquired under s. 55.10(1) and (2), as set forth in an affidavit required under subsection (4). If there is a surplus after all valid judgment liens and execution liens have been satisfied under this paragraph, the surplus must be paid to the owner of the property sold.

(b) If the affidavit required by subsection (4) discloses that the property is also subject to any recorded mortgage, financing statement, tax warrant, or other lien, other than a judgment lien, which is junior in priority to the levying creditor's judgment lien, any surplus from the sale of the property shall be paid over to the registry of the court from which the execution issued for further proceedings to determine the priority in which such surplus shall be distributed among judgment lienholders, other lienholders, and the owner of the property sold.

(3) The value of the property levied upon shall not be considered excessive unless the value unreasonably exceeds the total debt reflected in all unsatisfied judgment liens that have not lapsed and any unsatisfied lien of the levying creditor.

(4) Before the date of the first publication or posting of the notice of sale provided for under s. 56.21, at the time of the levy request to the sheriff, the levying creditor shall deliver to the sheriff an affidavit setting forth all of the following as to the judgment debtor:

(a) For a personal property levy, an attestation by the levying creditor or the levying creditor's attorney of record that he or she has reviewed the database or judgment lien records established in accordance with ss. 55.201-55.209 and that the information contained in the affidavit based on that review is true and correct. For a real property levy in accordance with s. 55.10(1) and (2), an attestation by the levying creditor or ~~his or her~~ the levying creditor's attorney of record that he or she has reviewed the records of the clerk of the court of the county where the property is situated, or that he or she has performed or reviewed a title search, and that the information contained in the affidavit, including a disclosure of all judgment liens, mortgages, financing statements, tax warrants, and other liens against the real property, based on that review or title search is true and correct.

(b) The information required under s. 55.203(1) and (2) for each judgment lien certificate indexed under the name of the judgment debtor as to each judgment creditor; the file number assigned to the record of the original and, if any, the second judgment lien; and the date of filing for each judgment lien certificate under s. 55.202 or s. 55.204(3). For each judgment lien recorded on real property, the information contained in the certified copy of recordation of lien under s. 55.10(1) and (2), and for each other lien recorded on real property, the name and address of the lienholder as shown in the copy of the recorded lien disclosed by the title search.

(c) A statement that the levying creditor either does not have any other levy in process or, if another levy is in process, the levying creditor believes in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

(5) A sheriff may rely on the affidavit submitted as required under this section, and a sheriff paying money received under an execution in accordance with the information contained in the affidavit required under subsection (4) is not liable to anyone for damages arising from a wrongful levy or wrongful distribution of funds.

(6) A sheriff who is uncertain as to whom to disburse the proceeds from the sale of the levied property may apply for instructions from:

(a) The court that entered the judgment that is the basis of the judgment lien; or

(b) The appropriate court where the levied property was located at the time of the levy, if the sheriff serves, by process pursuant to chapter 48, by certified mail, or by return receipt requested, a copy of his or her application and the notice of hearing on the levying creditor, the judgment debtor, and any other parties identified in the affidavit.

History.—s. 57, Nov. 23, 1828; RS 1206; GS 1636; RGS 2840; CGL 4527; s. 11, ch. 67-254; s. 307, ch. 95-147; s. 5, ch. 98-410; s. 19, ch. 2000-258; s. 13, ch. 2001-154; s. 11, ch. 2005-241; s. 6, ch. 2009-215; s. 4, ch. 2014-207.
Note.—Former s. 55.50.

[No change] **SECTION 56.275 Disposition of unclaimed money collected.**

All unclaimed proceeds from sheriff's sales or money collected under execution shall be disposed of as provided in s. 116.21.

History.—s. 9, ch. 79-396; s. 7, ch. 82-118.

SECTION 56.28 Executions; failure of officer to pay over moneys collected.

If any officer collecting money under execution fails or refuses to pay it over within 30 days after it has been received by him or her, or within 10 days after demand by the ~~plaintiff or his or her~~ levying creditor or the levying creditor's attorney of record made in writing and delivered during regular business hours to the civil process bureau, the officer is liable to pay the same and 20 percent damages, to be recovered by motion in court.

History.—s. 7, Feb. 17, 1853; RS 1207; GS 1637; RGS 2841; CGL 4528; s. 11, ch. 67-254; s. 308, ch. 95-147; s. 6, ch. 98-410. Note.—Former s. 55.51.

SECTION 56.29 Proceedings supplementary.

¹(1) When any ~~person or entity~~ judgment creditor holds an unsatisfied judgment or judgment lien obtained under chapter 55, the judgment ~~holder or judgment lienholder~~ creditor may file a motion and an affidavit so stating, identifying, if applicable, the issuing court, the case number, and the unsatisfied amount of the judgment or judgment lien, including accrued costs and interest, and stating that the execution is valid and outstanding, and thereupon the judgment ~~holder or judgment lienholder~~ creditor is entitled to these proceedings supplementary to execution.

(2) ~~On such plaintiff's motion the court shall require the defendant in execution to appear before it or a general or special magistrate at a time and place specified by the order in the county of the~~

defendant's residence to be examined concerning his or her property. The judgment creditor shall describe in the motion described in paragraph (1) or by filing a supplemental affidavit, any property of the judgment debtor, not exempt from execution, in the hands of any person, or any property, debt, or other obligation due to the judgment debtor, that may be applied toward the satisfaction of the judgment. If the court is satisfied from the motion and affidavit(s) that property of the judgment debtor, or any debt, or other obligation due to the judgment debtor, may be applied to satisfy the judgment, then the court shall issue a Notice to Appear directing such person to file an affidavit, as provided in s. 56.16,⁸ with the court by a date certain stating why the property, debt or other obligation should not be applied to satisfy the judgment. The Notice to Appear shall describe with reasonable particularity the property, debt or other obligation that may be available to satisfy the judgment, and shall provide such person with the opportunity to present defenses, discovery, and to a jury trial, as provided in s. 56.18. The Notice to Appear shall be served as provided for in Fla. Stat. Chapter 48.

~~(3) The order shall be served in a reasonable time before the date of the examination in the manner provided for service of summons or may be served on such defendant or his or her attorney as provided for service of papers in the rules of civil procedure.~~

~~(4) Testimony shall be under oath, shall be comprehensive and cover all matters and things pertaining to the business and financial interests of defendant which may tend to show what property he or she has and its location. Any testimony tending directly or indirectly to aid in satisfying the execution is admissible. A corporation must attend and answer by an officer who may be specified in the order. Examination of witnesses shall be as at trial and any party may call other witnesses.~~

~~±(5) The court may order any property of the judgment debtor, not exempt from execution, in the hands of any person, or any property, debt, or other obligation due to the judgment debtor, to be applied toward the satisfaction of the judgment debt. The court may entertain claims concerning the judgment debtor's assets brought under chapter 726 and enter any order or judgment, including a money judgment against any initial or subsequent transferee, in connection therewith,~~

⁸ The affidavit procedure is also used in Fla. Stat. § 77.16 for garnishment for a third party to claim ownership of garnished assets.

~~irrespective of whether the transferee has retained the property. Claims under chapter 726 are subject to the provisions of chapter 726 and applicable rules of civil procedure.~~

(63)(a) When, within 1 year before the service of process on ~~him or her~~the judgment debtor in the original proceeding or action, ~~defendant~~the judgment debtor has had title to, or paid the purchase price of, any personal property to which the ~~defendant~~judgment debtor's spouse, any relative, or any person on confidential terms with ~~defendant~~the judgment debtor claims title and right of possession ~~at the time of examination~~, the ~~defendant~~judgment debtor has the burden of proof to establish that such transfer or gift ~~from him or her~~ was not made to delay, hinder, or defraud creditors.

(b) When any gift, transfer, assignment or other conveyance of personal property has been made or contrived by the judgment debtor to delay, hinder, or defraud creditors, the court shall order the gift, transfer, assignment or other conveyance to be void and direct the sheriff to take the property to satisfy the execution. This does not authorize seizure of property exempted from levy and sale under execution or property which has passed to a bona fide purchaser for value and without notice. Any person aggrieved by the levy or Notice to Appear may proceed under ss. 56.16-56.20.

(74) At any time the court may refer the proceeding to a general or special magistrate who may be directed to report findings of law or fact, or both. The general or special magistrate has all the powers thereof, including the power to issue subpoena, and shall be paid the fees provided by ~~law~~the court.

(85) A party or a witness examined under these provisions is not excused from answering a question on the ground that the answer will tend to show him or her guilty of the commission of a fraud, or prove that he or she has been a party or privy to, or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose, or that the party or witness or another person claims to have title as against the ~~defendant~~judgment debtor or to hold property derived from or through the ~~defendant~~judgment debtor, or to be discharged from the payment of a debt which was due to the ~~defendant~~judgment debtor or to a person in ~~his or her~~ behalf of the judgment debtor. An answer cannot be used as evidence against the person so answering in any criminal proceeding.

¹(96) The court may enter any orders, judgments, or writs required to carry out the purpose of this section, including those orders necessary or proper to subject property or property rights of any judgment debtor ~~to execution~~, and including entry of money judgments as provided in ss.

56.16 through 56.19 against any ~~impleaded defendant~~ person to which a Notice to Appear has been directed and over whom the court obtained personal jurisdiction irrespective of whether such ~~defendant~~ person has retained the property, subject to ~~ss. 56.18 and 56.19~~ and applicable principles of equity, and in accordance with chapters 76 and 77 and all applicable rules of civil procedure.

(~~407~~) Any person failing to obey any order issued under this section by a judge or general or special magistrate or failing to attend in response to a subpoena served on him or her may be held in contempt.

(~~418~~) Costs for proceedings supplementary shall be taxed against the ~~defendant~~ judgment debtor as well as all other incidental costs determined to be reasonable and just by the court including, but not limited to, docketing the execution, sheriff's service fees, and court reporter's fees. Reasonable attorney's fees may be taxed against the ~~defendant~~ judgment debtor .

(9) The court may order any property of the judgment debtor, not exempt from execution, in the hands of any person, or any property, debt, or other obligation due to the judgment debtor, to be applied toward the satisfaction of the judgment debt. The provisions of F.S. 56.16 – 56.20 shall apply to any order issued under this subsection (9).

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, ch. 7842, 1919; CGL 4540-4549; s. 1, ch. 63-144; s. 11, ch. 67-254; s. 1, ch. 72-12; s. 13, ch. 73-334; s. 12, ch. 87-145; s. 309, ch. 95-147; s. 20, ch. 2000-258; s. 53, ch. 2004-11; s. 12, ch. 2005-241; s. 17, ch. 2014-182. Note.—Former ss. 55.52-55.611.

¹Note.—Section 18, ch. 2014-182, provides that “[t]he amendments made by this act to s. 56.29, Florida Statutes, are remedial in nature, are intended to clarify existing law, and shall be applied retroactively to the full extent permitted by law.”

(10) The court may entertain claims concerning the judgment debtor's assets brought under chapter 726 and enter any order or judgment, including a money judgment against any initial or subsequent transferee, in connection therewith, irrespective of whether the transferee has retained the property. Claims under chapter 726 brought under this s. 56.29 shall be initiated by a supplemental complaint, and served as provided by rule 1.070 of the Florida Rules of Civil Procedure. The claims under the supplemental complaint are subject to the provisions of chapter 726 and the rules of civil procedure. All such claims brought under this section shall proceed before the same tribunal as the original action.

SECTION 56.30 Discovery in Proceedings Supplementary⁹

1) In addition to any other discovery permitted under the rules of civil procedure, on the judgment creditor's motion the court shall require the judgment debtor to appear before it or a general or special magistrate at a time and place specified by the order in the county of the judgment debtor's residence or principal place of business to be examined concerning property subject to execution.

(2) The order shall be served in a reasonable time before the date of the examination in the manner provided for service of summons or may be served on the judgment debtor or the judgment debtor's attorney of record as provided for service of papers in the rules of civil procedure.

(3) Testimony shall be under oath, shall be comprehensive and cover all matters and things pertaining to the business and financial interests of the judgment debtor which may tend to show what property the judgment debtor has and its location. Any testimony tending directly or indirectly to aid in satisfying the execution is admissible. A corporate judgment debtor must attend and answer by a designee with knowledge or an identified officer or manager who may be specified in the order. Examination of witnesses shall be as at trial and any party may call other witnesses.

⁹ This Section is former section 56.29(6).