

MEMORANDUM

TO: Barbara Riesberg
Donald Kirk
Diane Wells

FROM: Michel O. Weisz

DATE: June 19, 2015

RE: PSTF - Revised F.S. 56.29

To facilitate revision of F.S 56.29, we have discussed breaking the statute down into sections. The sections will consist first, of initiation of proceedings supplementary; second of notice to non-parties, and third adjudication of judgment creditor's claims and the defenses of non-parties. This sequence requires moving part of the current statute, dealing with examination of the judgment –debtor by the court to locate assets of the judgment debtor to a different section (proposed section 56.30)

I attach a proposed draft below. I have marked up the current version of 56.29. Note there are comments for items that we have not discussed.

West's F.S.A. § 56.29

56.29. Proceedings supplementary

- (1) When any person or entity holds an unsatisfied judgment or judgment lien obtained under chapter 55, the judgment holder or judgment lienholder 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 is entitled to these proceedings supplementary to execution.
- (2) Along with the motion and affidavit described in paragraph (1), or within a reasonable time thereafter, the judgment holder or judgment lienholder may file an affidavit, describing any property of the defendant or any debt, or other obligation due to the defendant, not exempt from execution, in the hands of any person that may be applied toward the satisfaction of the judgment debt. If the court is satisfied that the affidavit establishes a prima facie basis to believe that property of the defendant, or any debt, or other obligation due to the defendant in the hands of any person may be applied to satisfy the judgment debt, then the court shall issue a Notice to Appear directing such person to file an affidavit, as provided in ss 56.16, with the court by a date certain stating why the property should not be applied to satisfy the judgment debt. The Notice to Appear shall describe with reasonable particularity the

property 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 ss 56.18.

(3)(a) When, within 1 year before the service of process on him or her, defendant has had title to, or paid the purchase price of, any personal property to which the defendant's spouse, any relative, or any person on confidential terms with defendant claims title and right of possession the defendant 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](#).

4) 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 the court .

(5) 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 or to hold property derived from or through the defendant, or to be discharged from the payment of a debt which was due to the defendant or to a person in his or her behalf. An answer cannot be used as evidence against the person so answering in any criminal proceeding.

(6) 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 defendant to execution, including entry of money judgments as provided in [ss.56.16 through 56.19](#) against any non-party to which a Notice to Appear has been directed irrespective of whether such defendant or non-party has retained the property, subject to applicable principles of equity, and in accordance with chapters 76 and 77 and applicable rules of civil procedure.

(7) 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.

(8) Costs for proceedings supplementary shall be taxed against the defendant 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

(9) The court may entertain claims concerning the defendant'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 shall be initiated by a supplemental complaint, served as provided by Rule 1.070 of the Florida rules of Civil Procedure and the claims under the supplemental complaint are subject to the provisions of chapter 726 and all applicable rules of civil procedure.

Credits

Laws 1919, c. 7842, §§ 1 to 10; Comp.Gen.Laws 1927, §§ 4540 to 4549; Laws 1963, c. 63-144, § 1; Fla.St. §§ 55.52 to 55.611; Laws 1967, c. 67-254, § 11; Laws 1972, c. 72-12, § 1; Laws 1973, c. 73-334, § 13; Laws 1987, c. 87-145, § 12. Amended by Laws 1995, c. 95-147, § 309, eff. July 10, 1995; Laws 2000, c. 2000-258, § 20, eff. July 1, 2000; Laws 2004, c. 2004-11, § 53, eff. Oct. 1, 2004; Laws 2005, c. 2005-241, § 12, eff. June 17, 2005; Laws 2014, c. 2014-182, § 17, eff. July 1, 2014.

Proposed F.S. 56.30 Discovery in Proceedings Supplementary

1) On plaintiff's motion the court shall require the defendant 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.

(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 such defendant or his or her attorney as provided for service of papers in the rules of civil procedure.

(2) 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.

(4) Subject to notice to non-parties as provided in F.S. 56.29(2), 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..