

## CHAPTER 56

## FINAL PROCESS

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**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 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.

**56.021 Executions; issuance and return, alias, etc.** When issued, an execution is valid and effective during the life of the judgment 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.**—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.

**56.031 Executions; form.**—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.

**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 with a satisfaction of judgment. All receipts shall be endorsed on the execution.

(2) All unsatisfied executions in the hands of the sheriff may be returned, to the court issuing the execution, 20 years after the date of issuance of final judgment upon which the execution was issued. 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.

**Note.**—Former s. 55.18.

**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.

**56.061 Property subject to execution.**—Lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations, 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 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.

**56.071 Executions on equities of redemption; discovery of value.**—On motion made by the party 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, to whom and when paid so that the value of the equity of redemption may be ascertained before it is sold. The court may appoint a master 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.

**Note.**—Former s. 55.21.

**56.09 Executions against corporations; generally.**

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

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

**Note.**—Former s. 55.23.

**56.10 Executions against corporations; receiver-ship.**

—If an execution cannot be satisfied in whole or in part for lack of property of the defendant corporation subject to levy and sale, on motion of the judgment creditor the circuit court in chancery within whose circuit such corporation 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 for the purpose of enforcing the judgment, and may appoint a receiver for the corporation. 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.

**56.12 Executions; levy, forthcoming bond.**

—If a defendant in execution wants to retake possession of any property levied on, he or she may do so by executing a bond with surety to be approved by the officer in favor of the plaintiff 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.**—RS 1192; GS 1621; RGS 2825; CGL 4512; s. 11, ch. 67-254; s. 301, ch. 95-147.

**Note.**—Former s. 55.34.

**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.**—RS 1193; GS 1622; RGS 2826; CGL 4513; s. 11, ch. 67-254.

**Note.**—Former s. 55.35.

**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.

**56.15 Executions; stay of illegal writs.**

—If any execution issues illegally, the defendant in execution 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 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.

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

—If any person other than the defendant in execution claims any property levied on, he or she may obtain possession of the property by filing with the officer having the execution an affidavit by himself or herself, his or her agent or attorney, that the property claimed belongs to him or her and by furnishing the officer a bond with surety to be approved by the officer in favor of plaintiff 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 and to pay plaintiff all damages found against him or her 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.

**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.

**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.

**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 and it appears that the claim was interposed for delay, plaintiff 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 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.

**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, awarding a recovery by the plaintiff from the defendant and his or her 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, and awarding separately such damages as the jury may have awarded, 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.

**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. 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 original defendant.

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

**Note.**—Former s. 55.43.

**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 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 property, notice of such levy and execution sale 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. 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.

**Note.**—Former s. 55.44.

**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; if the defendant 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.

**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.

**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 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.

**56.27 Executions; payment to execution creditor of money collected.**—All money received under executions shall be paid to the party in whose favor the execution was issued or his or her attorney. The receipt of the attorney shall be a release of the officer paying the money to him or her. When 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. When property sold under execution brings more than the amount of the execution, the surplus shall be paid to defendant without delay.

**History.**—s. 57, Nov. 23, 1828; RS 1206; GS 1636; RGS 2840; CGL 4527; s. 11, ch. 67-254; s. 307, ch. 95-147.

**Note.**—Former s. 55.50.

**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.

**56.28 Executions; failure of officer to pay over moneys collected.**—If any officer collecting money under execution shall fail or refuse to pay it over within 30 days after it shall have been received by him or her, or within 10 days after demand made by the plaintiff or his or her attorney of record, the officer shall be 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.

**Note.**—Former s. 55.51.

**56.29 Proceedings supplementary.—**

(1) When any sheriff holds an unsatisfied execution, the plaintiff in execution may file an affidavit so stating and that the execution is valid and outstanding and thereupon 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 master 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.

(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 judge may order any property of the judgment debtor, not exempt from execution, in the hands of any person or due to the judgment debtor to be applied toward the satisfaction of the judgment debt.

(6)(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 at the time of examination, 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 defendant 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 may proceed under ss. 56.16-56.20.

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

(8) 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.

(9) The court may enter any orders required to carry out the purpose of this section to subject property or property rights of any defendant to execution.

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

(11) 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.

**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.

**Note.**—Former ss. 55.52-55.611.