

CIVIL PROCEDURE

SUBCHAPTER B EXECUTION

Section 931. Executions - Defined

Executions shall be deemed process of the Court, and shall be issued by the clerk, and directed to the Chief of the Tribal Police.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 932. Kinds of Execution

Executions are of three kinds:

- (a) Against the property of the judgment debtor.
- (b) For the delivery of possession of real or personal property, with damages for withholding the same, and costs.
- (c) Executions in special cases.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 933. Property Subject to Levy

Lands, tenements, goods and chattels, not exempt by law shall be subject to the payment of debts, and shall be liable to be taken on execution and sold, as hereinafter provided.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 934. Property Bound After Seizure

All real estate not bound by the lien of the judgment, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.

[History: PUBLIC LAW #SF-85-58, June, 21, 1985.]

Section 935. Execution Must Be Issued Within Five Years

If execution is not issued and filed as provided by subchapter within five (5) years after the date of any judgment that now is or may hereafter be rendered, in the Tribal Court or if five (5) years have intervened between the date that the last execution on such judgment shall become

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unenforceable and of no effect, and shall cease to operate as a lien on the real estate of the judgment debtor. Provided, that this section shall not apply to judgments in favor of the Tribe its subdivisions or agents.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 936. Priority Among Property

The writ of execution against the property of the judgment debtor, issuing from the Tribal Court shall command the officer to whom it is directed, that of the goods and chattels of the debtor he cause to be made the money specified in the writ; and for want of goods and chattels, he cause the same non-trust interest in lands and tenements of the debtor; and the amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the executions.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 937. Priority Among Executions

When two or more writs of execution against the same debtor shall be sued out and when two or more writs of execution against the same debtor shall be delivered to the officer prior to the date of sale or this property, no preference shall be given to either of such writs but if a sufficient sum of money be not made to satisfy all such executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands, provided that nothing herein contained shall be so construed as to affect any preferable lien which one or more of the judgments, on which execution issued, may have on the property of the judgment debtor.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 938. Levy by Priority

The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall endorse on the writ of execution, "no goods", and forthwith levy the writ of execution upon any interest in the lands and tenements of the debtor, which may be liable to satisfy the judgment; and if any of the interests in such lands and tenements of the debtor which may be liable shall be encumbered by mortgage or any other lien or liens, such lands and tenements may be levied upon and appraised and sold, subject to such lien or liens, which shall be stated in the appraisalment.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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Section 939. Who Makes Levy

It shall be unlawful for anyone to levy an attachment or execution within the Tribal jurisdiction who is not a bonded Tribal or Federal Police officer.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 940. When Levy Void

Any attachment or execution issued to, or levied by any one other than a bonded Tribal or Federal Police officer shall be void and of no effect and the Court Clerk or other person issuing same, or officer or other person levying same, as the case may be, together with their bondsmen shall be liable for any damage caused thereby.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 941. Penalty for Unlawful Levy

Anyone violating the provisions of Section 939 of this Title shall be punished by a fine not to exceed one hundred dollars (\$100.00) or confinement in the Tribal jail not to exceed thirty (30) days or both.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 942. Levy on Property Claimed by Third Person

If the officer, by virtue of an execution issued from the Tribal Court, shall levy the same on any goods and chattels claimed by any person other than the defendant, or be requested by the plaintiff to give him an undertaking, with good and sufficient securities to pay all costs and damages that he may sustain by reason of the detention or sale of such property; and until such undertaking shall be given, the officer may refuse to proceed as against such property.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 943. Re-Delivery to Defendant

In all cases where The Tribal Police Chief or other officer shall, by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security, in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice, given in

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writing, to said defendant in execution, or by advertisement published in a legal newspaper, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him, given, or to pay to the officer holding the execution the full value of said goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, may be proceeded on as in other cases.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 944. Notice of Sale of Chattels

The officer who levies upon goods and chattels, but virtue of an execution issued by the Tribal Court, before he proceeds to sell the same shall cause public notice to be given of the time and place of sale, for at least ten (10) days before the day of sale. The notice shall be given by advertisement, published in some newspaper printed, or, in case no legal newspaper be published, by setting up advertisements in five public places in the reservation. Two advertisements shall be put up in the township where the sale is to be held; and where goods and chattel levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution true and perfect inventory of such goods and chattels, and the plaintiff in such execution may thereupon sue out another writ of execution, directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold, unless the time and place of sale be advertised, as hereinbefore provided.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 945. Further Levy When Property Taken Insufficient

When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the property remaining in his hands not sold shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 946. Filing and Indexing of Execution

(a) When a general execution is issued and placed in the custody of the Tribal Police Chief for levy, a certified copy of such execution shall be filed in the office of the Court Clerk and shall be indexed the same as judgments.

(b) If a general or special execution is levied upon an interest lands and tenements, the Tribal Police Chief shall endorse on the face of the writ the legal description and shall have three

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disinterested persons who have taken an oath to impartially appraise the property so levied on, upon actual view; and such disinterested persons shall return to the officer their signed estimate of the real value of said property.

(c) To extend a judgment lien beyond the initial or any subsequent statutory period, prior to the expiration of such period, a certified copy of a general execution thereon shall be filed and indexed in the same manner as judgments in the office of the Court.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 947. Waiver of Appraisement

It is against the public policy of the Tribe to allow enforcement of execution upon realty without appraisal, and if the words "appraisement waived" or other words of similar import, shall be inserted in any deed, mortgages, bonds, notes, bill or written contract, they shall be of no effect whatsoever and an appraisal shall be ordered notwithstanding any contract to the contrary.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 948. Return of Appraisement

The officer receiving such return of appraisement pursuant to Section 946(b) of this Title shall forthwith deposit a copy thereof with the Clerk of the Court and advertise and sell such property, agreeably to the provisions of this Title.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 949. When Lien Restricted

If, upon such return, as aforesaid, it appears, by the inquisition, that two thirds of the appraised value of said non-trust interest in lands and tenements, so levied upon is sufficient to satisfy the execution, with costs, the judgment on which such execution issued shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other judgment creditor; but no such property shall be sold for less than two-thirds of the value returned in the inquest; and nothing in this section contained shall, in any wise, extend to affect the sale of lands by the Tribe but all lands, the corporation or association indebted to the Tribe for any debt or taxes, or in any other manner, shall be sold without valuation for the discharge of such debt or taxes, agreeably to any laws in such cases made and provided.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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Section 950. Notice of Sale of Realty

Any non-trust interest in lands and tenements taken on execution shall not be sold until the officer causes public notice of the time and place of sale to be given by publication for two (2) successive weeks in a legal newspaper and by putting up an advertisement upon the Court house door or other public bulletin board within a common area of the Court house and in five (5) other public places in the reservation, two (2) of which shall be in the township where such lands and tenements lie. Such sale shall not be held less than thirty (30) days after the date of the first publication of the notice herein required.

All sales made without such advertisement shall be set aside on motion by the Court to which the execution is returnable.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 951. Confirmation of Sale

If the Court, upon the return of any writ of execution, for the satisfaction of which any lands or tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has, in all respects, been made in conformity with the provisions of this Title, the Court shall direct the clerk to make an entry on the journal that the Court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed for such interest in lands and tenements; and the officer, on making such sale, shall deposit the purchase money with the clerk of the Court where same shall remain until the Court shall have examined his proceedings as aforesaid, when said clerk of the Court shall pay the same of the person entitled thereto, agreeably to the order of the Court.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 952. Police Chief's Deed

The Chief of the Tribal Police or other officer who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchase as good and sufficient deed of conveyance of the land sold, as the person or persons against whom such writ or writs of execution were issued could have made of the same, at or any time after they became liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned as was vested in the party at, or after, the time when such lands and tenements became liable to the satisfaction of the judgment; and such deed of conveyance, to be made by the Chief of Tribal Police or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount and date of rendition of each judgment, but virtue whereof the said lands and tenements were sold as

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aforesaid, and shall be executed, acknowledged and recorded as is or may be provided by law, to perfect the conveyance of such interests in real estate in other cases.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 953. Advance of Printer's Fees

The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ of execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 954. Demand for Printing Fees

Before any officer shall be excused from giving the notification mentioned in Section 952, he shall demand of the party for whose benefit the execution was issued, his agent or attorney, the fees in said section specified.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 955. Place of Sale

All sales of interests in land or tenements under execution shall be held at the Tribal Court house unless some other place within the reservation is designated by the judge having jurisdiction in the case. No Tribal Policeman or other officer making the sale of property, either personal or real, nor any appraiser of such property, shall either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.

Section 956. Other Executions of Realty Not Sold

If lands or tenements, levied on as aforesaid, are not sold upon one execution, other executions may be issued to sell the property so levied upon.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 957. Levy on Realty Under Several Executions

In all cases where two or more executions shall be put into the hands of the Tribal Police

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or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors, in whose favor one or more of said executions are issued, shall require the Tribal Police or other officer to levy said executions, or so many thereof as may be required, on separate parcels of the real property of the judgment debtor or debtors, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on, to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due to the execution bears to the amount of all the executions chargeable thereon, as near as may be according to the appraised value of each separate parcel of said real property.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 958. Deed by Successor of Officer Making Sale

If the term of service of the Tribal Police Chief or other officer who has made, or shall hereafter make sale of any non-trust interest in lands and tenements, shall expire, or if the Tribal Police Chief or other officer shall be absent, or be rendered unable by death or otherwise, to make a deed of conveyance of the same, any succeeding Tribal Police Chief or other officer or the law enforcement officer acting on his behalf, on receiving a certificate from the Court from which the execution issued for the sale of said non-trust interest in lands and tenements, signed by the clerk, by order of said Court, setting forth that sufficient proof has been made to the Court that said sale was fairly and legally made, and on tender of the purchase money, or if the same or any part thereof be paid then on proof of such payment and tender of the balance, if any, may execute to the said purchase or purchasers, or his or their legal representative, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law and have the same effect as if the Tribal Police Chief or other officer who made the sale had executed the same.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 959. Payment to Defendant of Overplus After Sale

If, on any sale made as aforesaid, there shall be in the hands of the Tribal Police Chief or other officer more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, the Tribal Police Chief or other officer shall, on demand, pay the balance to the defendant in execution.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 960. Reversal of Judgment After Sale of Interest in Land

If any judgment or judgments, in satisfaction of which any non-trust interests lands or

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tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such cases, restitution shall be made, by the judgment creditors, of the money, for which such lands or tenements were sold, with lawful interest from the day of sale.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 961. Execution on Judgment in Favor of Tribe

In all civil actions wherein the Tribe as plaintiff, has heretofore or may hereafter recover judgment, and wherein any such action an execution has or may be issued, the Tribe through the officer or officers on whose relation the action was brought, may bid at such execution sale, and buy said property offered for sale, for any amount not to exceed the amount of the judgment in such action and such additional amount as may be approved by the Tribal Legislative Body said amount to be credited upon the judgment.

And further, when such property offered for the sale at execution is brought by the Tribe, said property may be sold for the Tribe by the officer or officers upon whose relation the Tribe was party plaintiff, and further provided that at such execution sales the attorney or attorneys representing the Tribe may bid for the Tribe, not to exceed the amount of the judgment and such additional amount as may be approved by the Tribal Legislative Body, provided however, that said bid not more than one hundred dollars (\$100.00) higher than the next best bid, and if there be no other bidder, then not to exceed one hundred dollars (\$100.00).

And further provided that in disposing of such property so acquired, if it be personal property the officer or successor of the officer upon whose relation the tribe was plaintiff may sell said property by executing a good and sufficient Bill of Sale, to be attested by the Secretary of the Tribe. And in disposing of any non-trust interest in real property so acquired or any interest or equity therein, the officer or successor in office on whose relation the Tribe was party plaintiff may execute in the name of the Tribe by said officer a good and sufficient deed, to be attested by the Secretary of the Tribe. Provided, however, that in no event shall any sale be valid under this Title for any amount less than the amount for which said property was originally bid in by the Tribe. The funds obtained upon the sale of any such property shall be placed in the fund for which the judgment was obtained, or if none, then in the Tribal land purchases fund for the purchase of further real property to the Tribe.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 962. Reappraisal Where Realty Twice Advertised for Sale

In all cases where a non-trust interest in real estate has been or may hereafter be taken on execution and appraised and twice advertised and offered for sale, and shall remain unsold for the want of bidders it shall be the duty of the Court, on motion of the plaintiff, to set aside such appraisal and order a new one to be made, or to set aside such levy and appraisal and

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order a new execution to issue, as the case may require.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 963. Return of Execution

The Chief of the Tribal Police or other officer to whom any writ of execution shall be directed, shall return such writ to the Court to which the same is returnable, within ninety days from the date thereof.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 964. Principal and Surety

In all cases where judgment is rendered in the Tribal Court upon any instrument of writing in which two or more persons are jointly and severally bound, and it shall be made to appear to the Court, by parol or other testimony, that one or more of said persons so bound, signed the same as surety or bail, for his or their co-defendant, it shall the duty of the clerk of said Court, in recording the judgment thereon to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the Court aforesaid shall issue execution on such judgment, commanding the Chief of the Tribal Police or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor; but for want of sufficient property of the principal or debtor to make the same that he cause the same to be made of the goods and chattels, lands and tenements, of the surety or bail. In all cases, the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 965. Hearing on Assets

In addition to other discovery procedures, the Court, at any time after judgment upon motion of the judgment creditor, may order the judgment debtor to appear and answer concerning his property subject to execution to satisfy the judgment. The order to appear shall be served on the judgment debtor as a summons is served and may contain an order prohibiting the conveyance of any non-exempt property, and may order the production of any books, records, documents, or paper relating to the judgment creditors property. Such order may be enforced by contempt proceedings.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]