CHAPTER 403

TITLE TO REAL ESTATE BY LEVY OF EXECUTION

SUBCHAPTER 1

GENERAL PROVISIONS

§1951. Expenses part of execution

The expenses of levy in any of the modes provided by this chapter in a levy, sale or redemption are part of the execution.

§1952. Creditor or debtor may act by representative

Everything which a creditor or debtor is required in this chapter to do may be done by his executors or administrators, or by any person lawfully claiming under him.

§1953. Real estate of deceased taken by execution

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §18 (RP).

§1954. Lands of debtor to State sold on execution

When an execution is issued in the name or for the use of the State, the debtor's real estate may be taken thereby and sold at auction, notice thereof being given as provided in section 2202, except that notice shall also be published in the state paper, and the last publication in both papers shall be 6 days before the sale. The officer shall make and execute to the purchaser a deed of the estate sold. The debtor has the same right to redeem as to redeem lands levied on by appraisement.

§1955. Attachment of right to conveyance effects premises

When the right of a debtor to a conveyance of real estate by bond or contract is attached, and a deed is made to the debtor during its existence, the attachment takes effect upon the premises, which may be levied on as in other cases.

§1956. Deed given to assignee; right sold; remedy of purchaser

When, during the existence of an attachment, a deed has been given to an assignee, the right of the debtor should be sold on the execution. When the right has been sold, and there has been no previous conveyance to the debtor, the purchaser has the same remedies in his own name against the obligor or contractor as the debtor would have had, by an action to recover damages for nonfulfillment, or to compel a specific performance, and when assignment before attachment is alleged, the assignee may be made a party. Upon refusal of the obligor or contractor, on request of the purchaser, to give correct information of the amount due or condition remaining to be performed, the purchaser may maintain his action without previous payment, performance or tender. Upon a hearing, the court may grant and decree such relief, payment or performance, as is equitable.

§1957. Alleged assignment contested

When an assignment of the bond or contract is alleged and the plaintiff contests it, the alleged assignee shall be made a party to the action, and an issue framed to be tried by a jury, which shall find whether such an assignment existed and was valid. If the assignee does not appear, the assignment is invalid.

SUBCHAPTER 2

LEVY BY APPRAISEMENT

§2001. Real estate levied on; appraisal

Real estate attachable, including the right to cut timber and grass as described in chapter 507, subchapter III, may be taken to satisfy an execution, by causing it to be appraised by 3 disinterested persons, one chosen by the creditor, one by the debtor and the other by the officer having the execution for service, who shall give notice to the debtor or his attorney, residing in the county where the land lies, to choose an appraiser, and shall allow him a reasonable time therefor, and if he neglects, appoint one for him.

§2002. Appraisers sworn; view of land

The appraisers may be sworn by the officer without fee or by a dedimus justice, faithfully and impartially to appraise the real estate to be taken, and a certificate of the oath shall be made, stating the date of its administration on the back of the execution by the person who administered it. They shall then proceed with the officer to view and examine the land so far as is necessary for a just estimate of its value. [PL 1987, c. 736, §12 (AMD).]

SECTION HISTORY

PL 1981, c. 456, §A50 (AMD). PL 1987, c. 736, §12 (AMD).

§2003. Return contains value and description of estate

The appraisers shall in a return made and signed by them on the back of the execution, or annexed thereto, state the value of the estate appraised, and describe it by metes and bounds, or in such other manner that it may be distinctly known and identified, whatever the nature of the estate may be.

§2004. Appraisal when several parcels taken

When several parcels of land are taken, they may be appraised separately or together. When taken at different times, there may be different sets of appraisers. A levy is valid when the return is signed by 2 of the appraisers, the other appearing to have been sworn and to have acted.

§2005. Officer's return, contents

The officer, in his return on the execution, shall state substantially the time when the land was taken on execution; how the appraisers were appointed; that they were duly sworn; that they appraised and set off the premises, after viewing the same, at the price specified; that he delivered seizin and possession to the creditor or his attorney, or assigned the same to him as in case of remainder or other incorporeal estate; and the description of the premises by himself or by reference to the return of the appraisers. If the appraisers' return is signed by 2 only, he must state whether all were present and acted. He may refer to and adopt, in his return, the return of the appraisers, and the subsequent proceedings will be valid though made after the return day of the execution or after the removal or disability of the officer.

§2006. Estates tail

Estates tail shall be taken, appraised and held as estates in fee simple.

§2007. Estate held in joint tenancy taken in execution

The whole or part of an estate held in joint tenancy or in common may be taken to satisfy an execution, in the same manner as other real estate is now taken and held in common, but the whole estate must be described and the share owned by the debtor must be stated.

§2008. Debtor's interest passes by levy

All the debtor's estate, interest or share in the premises, whether held in tail, reversion, remainder, for life, years or otherwise, passes by a levy, unless it is larger than the estate mentioned in the appraisers' return.

§2009. Levy on rents and profits

When the estate cannot be described as provided in section 2003, the execution may be levied on its rents and profits, and the officer may give seizin thereof to the creditor, and cause a person in possession to become tenant to him or, on his refusal, may turn him out and give possession to the creditor.

§2010. Part taken, damage to whole

When the premises consist of a mill, mill privilege or other estate more than sufficient to satisfy the execution, which cannot be divided by metes and bounds without damage to the whole, an undivided part of it may be taken and the whole described, or it may be levied on as provided in section 2009.

§2011. Levy on life estate

A levy may be made on an estate for life as on other real estate, and its value appraised; or it may be made on its rents and profits, and an appraisement of them made for a term of time, if the life so long continues, computing interest on the execution, and deducting the rents and profits from time to time when due. When the estate expires before the end of the term for which it was taken, the creditor by an action on the judgment may recover the balance due.

§2012. Levy on leasehold; disposal of rent

When the levy is made on the whole of an estate under lease, the rent shall be paid to the creditor from the time of the levy. When made on part of it, the appraisers shall determine what portion of the rent is to be paid to him, and it shall be paid to him accordingly.

§2013. Seizin and possession delivered; debtor not ousted

The officer shall deliver to the creditor or his attorney, seizin and possession of an estate levied on, so far as the nature of the estate and the title of the debtor admit. When a remainder, reversion or right of redemption is taken, the debtor in possession shall not be ousted, but his right therein shall be assigned to the creditor, and a return made accordingly.

§2014. Levy on land fraudulently conveyed or disseized

A levy may be made on land fraudulently conveyed by a debtor, or of which he has been disseized and into which he has a right of entry. In such case, the tenant in possession shall not be ousted, but the officer shall deliver to the creditor a momentary seizin, sufficient to enable him to maintain an action for its recovery in his own name.

§2015. Debt assigned; estate held in trust for assignee

When the debt has been previously assigned for a valuable consideration, the creditor named in the execution holds an estate levied on to satisfy it in trust for his assignee, who is entitled to a conveyance thereof, which may be enforced by a civil action.

§2016. Execution returned and recorded

The officer shall return the execution into the clerk's office where it is returnable, and within 3 months after completing the levy cause it, with the return thereon, to be recorded in the registry of deeds where the land lies.

§2017. Unrecorded levy void against purchaser or creditor

When not recorded as provided in section 2016, the levy is void against a person who has purchased for a valuable consideration, or has attached or taken on execution, the same premises without actual

notice thereof. If the levy is recorded after the 3 months, it will be valid against a conveyance, attachment or levy made after such record.

§2018. Levy waived or void

A creditor who has received seizin of a levy not recorded cannot waive it unless the estate was not the property of the debtor, or not liable to seizure on execution, or cannot be held by the levy, when it may be considered void, and he may resort to any other remedy for satisfaction of his judgment.

§2019. Failure of title, alias execution; debtor may convey by deed

When the execution has been recorded and the estate levied on does not pass by the levy for causes named in section 2018, the creditor may by motion in the court issuing the execution require the debtor to show cause why an alias execution should not be issued on the same judgment. If the debtor does not show sufficient cause, the levy may be set aside, and an alias execution issued for the amount then due on the judgment, unless during its pendency the debtor tenders in court a deed of release of the land levied on, and makes it appear that the land, at the time of the levy, was and still is his property, and pays the expenses of the levy and the taxable costs of the action. The judgment shall be satisfied for the amount of the levy.

§2020. Judgment assignee may bring action if estate does not pass by levy

When a judgment has been assigned for a valuable consideration, and bona fide, in writing, and a levy of an execution issued on such judgment has been made, and the estate does not pass by the levy, and the creditor dies after the levy, the assignee may bring an action in the court issuing the execution, setting forth the facts aforesaid therein, and requiring the debtor to show cause why another execution should not issue on the same judgment, in the name and for the benefit of said assignee. If the debtor, after being duly summoned, does not show sufficient cause why it should not be done, the levy may be set aside; and the court from which said execution issued may order and issue another execution on the same judgment, for the amount of the original debt, interest and costs, in the name and for the benefit of such plaintiff, and against such debtor and his property, in the usual form, with necessary charges.

§2021. Assignee may bring action in own name

In all cases where a judgment has been assigned as provided for in section 2020 and is not discharged, the assignee may bring a civil action thereon in his own name. Upon averment and proof of the facts aforesaid, the court may render judgment and execution thereon in his favor, subject to any legal defense which the debtor might have if the action were instituted by the original creditor.

§2022. Levy commences when appraisers sworn

For the purpose of fixing the amount due on the execution and the time when the debtor's right to redeem expires, all levies shall be considered to commence on the day of the date of the administration of the oath to the appraisers, although it may appear by the return of the officer that the estate was seized on execution before, or that the proceedings were not completed until after that day.

§2023. Validity of excess levy; remedy

When, by an error of the officer, the amount for which the levy was made exceeds the amount of debt or damage, costs, interest and costs of levy, by a sum not greater than 1% thereof, it is valid if otherwise legally made. The debtor or owner of the estate may maintain a civil action against such officer or his principal to recover all damages occasioned thereby, or a civil action against the creditor to have such error corrected, and the court may correct it, in any just and equitable manner, or it may decree a pecuniary compensation for the injury.

SUBCHAPTER 3

REDEMPTION OF LEVIES BY APPRAISEMENT

§2101. Creditor out of State or unknown; payment

Real estate levied on may be redeemed within one year thereafter, by tendering to the creditor the amount of its appraisement with interest from the time of levy, with reasonable expenses incurred for its improvement or repair, or in saving it from loss by the nonpayment of taxes legally assessed thereon prior to the levy, after deducting rents and profits with which he is chargeable. The creditor shall thereupon by his deed prepared at the expense of the debtor release to him all his title to the premises. When the creditor resides out of the State, or his residence is unknown, such payment is sufficient if made to the clerk of courts in the county where the real estate levied upon is situated, and such payment has the same effect as if made to the creditor.

§2102. Ascertainment of amount due

The debtor may have the amount due ascertained by a justice of the peace. After a hearing before the justice of the peace, the justice of the peace shall make in writing and sign a certificate of the sum found due, which is conclusive. The debtor may tender that sum, which is effectual to redeem, although he had before tendered a different sum. [PL 1987, c. 736, §13 (AMD).]

SECTION HISTORY

PL 1981, c. 456, §A51 (AMD). PL 1987, c. 736, §13 (AMD).

§2103. Failure to release after tender; recovery of land

If the creditor does not release the premises within 10 days after payment or tender of the amount due, the debtor may recover the same by a real action on his own seizin; but before judgment is entered he must bring into court, for the creditor, the money tendered.

§2104. Determination of amount due

The debtor, without tender, may, within one year and in season to have the amount ascertained and paid or tendered within the year, bring an action the complaint in which shall offer to pay the amount due, and the court shall ascertain it and require the debtor to bring it into court for the creditor, and the debtor thereupon shall be entitled to a decree in his favor, and to a writ of possession for the premises.

§2105. Costs regulated; redemption of life estates

Costs may be awarded to either party, except not against the creditor, unless he has, on request, unreasonably refused to render an account of rents and profits and of expenses for improvements and repairs, or to execute a deed of release as required in this chapter. When he has tendered such deed to the debtor before his action was commenced by the debtor, and in his answer relies upon it, and brings the deed into court for the debtor, he shall recover his costs. This section is applicable to the redemption of an estate for life, levied on by taking the rents and profits.

SUBCHAPTER 4

LEVIES ON EQUITIES OF REDEMPTION

§2151. Levy on mortgaged lands; deduction of amount due; remedy for errors

Levies may be made on lands mortgaged as on lands not mortgaged, and the amount due on the mortgage may be deducted by the appraisers from their estimated value, and stated in their return. If the full amount due was not deducted, or if the levy was made in the usual form, and it is ascertained that there was a mortgage on the premises, not including other real estate, and not known to the creditor at the time of the levy, it shall nevertheless be valid, and the creditor may recover of the debtor the amount which should have been and was not deducted, or the amount due on such mortgage.

§2152. Redemption; recovery by nonredeeming debtors

Levies made as provided in section 2151 may be redeemed within one year, as in other cases. When the debtor pays on the mortgage after the levy, and does not redeem, he may recover of the creditor the amount so paid, in a civil action.

SUBCHAPTER 5

LEVY BY SALE

§2201. Sale of real estate rights and interests

Real estate attachable and all rights and interests therein, including the right to cut timber and grass, as described in chapter 507, subchapter III, rights of redeeming real estate mortgaged, rights to a conveyance of it by bond or contract, interests by virtue of possession and improvement of lands as described in chapters 723 and 725 and estates for a term of years, may be taken on execution and sold, and the officer shall account to the debtor for any surplus proceeds of the sale, to be appropriated as provided in section 5001. Such seizure and sale pass to the purchaser all the right, title and interest that the execution debtor has in such real estate at the time of such seizure, or had at the time of the attachment thereof on the original writ, subject to the debtor's right of redemption. This section does not repeal any other modes of levy of execution provided in this chapter.

§2202. Notice of sale

The officer in such case shall give written notice of the time and place of sale to the debtor in person or by leaving the same at his last and usual place of abode, if known to be an inhabitant of the State, and cause it to be posted in a public place in the town where the land lies and in 2 adjoining towns, if so many adjoin; and if the land is situated in 2 or more towns, then in each of those towns and in 2 towns adjoining each of them; and if the land is in 2 or more counties and is contiguous, an officer in either county may take or seize on execution all the right of the debtor in such land, give, post and cause the notices to be published as required, and sell the whole right. When the land is not within any town, the notice shall be posted in 2 public places of the shire town of the county in which the land lies, instead of the posting aforesaid. When the debtor is not a resident of such county, the personal notice may be forwarded to him by mail, postage paid; all to be done 30 days before the day of sale. The notice shall be published for 3 weeks successively before the day of sale in a newspaper of general circulation in such county. [PL 1987, c. 667, §9 (AMD).]

SECTION HISTORY

PL 1987, c. 667, §9 (AMD).

§2203. Mortgagee to disclose amount due

When a right of redemption has been attached and judgment recovered, and a sale of it is to be made, the creditor may demand of the mortgagee to disclose, in writing under his hand, the condition of the mortgage and the sum due thereon, which shall be furnished within 24 hours, and in case of neglect he shall be liable for damages.

§2204. No disclosure; compulsion by deposition

If the disclosure mentioned in section 2203 is not furnished within that time, the creditor may apply to any notary public authorized to take depositions, in the county where the land lies or where the mortgagee resides, who shall take his deposition in relation to the facts required to be disclosed, and may exercise the power to compel attendance and disclosure which is authorized for taking a deposition in perpetuam. [PL 1987, c. 736, §14 (AMD).]

SECTION HISTORY

PL 1987, c. 736, §14 (AMD).

§2205. Sale at auction and deed; debtor's interest

The officer shall sell such right or interest at public auction to the highest bidder, and execute and deliver to the purchaser a sufficient deed thereof which, being recorded in the registry of deeds of the county or district where the land lies within 3 months after the sale, conveys to him all the title of the debtor in the premises. When such bidder on demand of the officer does not pay him the sum for which it was sold, he shall immediately sell it again as before, and if it does not sell for so much as at the first sale, the person to whom it was struck off at the first sale shall be accountable for the difference to the officer, who may recover it, to be indorsed on the execution, if not satisfied, and if satisfied paid to the debtor.

§2206. Adjournment of sale by officer; completion by another

When the officer deems it for the interest of all concerned to postpone the sale, he may adjourn it for any time not exceeding 7 days, and so from time to time until a sale is made, giving notice at the time of each adjournment by public proclamation. When he is unable to attend at the time and place of sale, another officer may adjourn it not exceeding 10 days, and if such inability is not then removed, may sell and make his return as the first officer might.

§2207. Seizure considered made; proceedings after return day valid.

The seizure on execution is considered made on the day when notice of the sale is given, and if the sale is not completed within 60 days after judgment it holds the right or interest seized within that time. The subsequent proceedings and return are valid, if made after the return day of the execution or after removal or disability of the officer.

§2208. Titles of banks and corporations, as mortgagees, sold

The titles of banks or corporations, as mortgagees of land, may be taken on execution and sold as real estate and interests therein are taken and sold. The officer may by deed convey the same, and a debt secured by such mortgage and remaining unpaid will pass with the mortgagee's title to the purchaser, who may recover the premises or debt in his own name. In such action, a copy of the mortgage, attested by the register of deeds, is prima facie evidence of such deed, and of the contracts secured by it, as remaining due at the time of trial. The cashier of the bank or clerk of the corporation, on reasonable request of the officer, shall furnish him with a certified copy of such contract and of all payments made thereon.

§2209. Transfer after notice of seizure invalid

No transfer of such mortgage or of the debt secured thereby, made by such corporation after notice of the seizure thereof on execution has been filed in the registry of deeds of the county or district where the land lies, or given to the party to be affected thereby, has any validity against the purchaser at such sale.

SUBCHAPTER 6

REDEMPTION OF REAL ESTATE; RIGHTS AND INTEREST

§2251. Redemption of rights and interest

Real estate, and rights and interests therein, and mortgages and debts so sold, may be redeemed within one year, as land levied on by appraisement may be. The rights and remedies of the parties are the same for this purpose, as those of mortgagor and mortgagee.

§2252. Attachment and sale of rights to redeem

The right of a debtor to redeem from a sale or from a levy by appraisement may be attached and sold on execution, as an equity of redemption may be, and the parties have the same rights and remedies. Attachments of such estate or equity of redemption, made before such levy or sale, are effectual on such right of redeeming, in the order in which they were made, in preference to attachments made subsequent to such levy or sale.

§2253. Redemption of property by creditor seizing right; repayment from proceeds of sale

When a creditor has seized on execution a right that would expire within 60 days, to redeem from a mortgage, sale or levy on execution, he may pay or tender to the person entitled thereto the amount which the debtor would have to pay to redeem the same. The officer selling such right shall first pay from the proceeds of sale the amount so paid by the creditor with interest, unless the debtor has paid it. The residue, if any, shall be applied in satisfaction of the execution.

SUBCHAPTER 7

SALE OF RAILROAD FRANCHISES

§2301. Execution sale of railroad franchises

When the franchise of a railroad has been sold on execution as provided in section 4855, the officer may convey the same by deed, which shall be recorded in the registry of deeds of each county or district in which any part of such railroad lies. The debtor has the same right of redemption from such sale as from sales of real estate under section 2201.

SUBCHAPTER 8

REDEMPTION BY OUT-OF-STATE DEFAULTED DEFENDANTS

§2351. Defaulted out-of-state defendant may redeem

A defendant living out of the State, defaulted in an action without an appearance or other service than a newspaper publication, may, within 6 months after the levy of an execution on his real estate or the sale of a right of redemption, bring an action for relief from the judgment in such action, and instead of the year allowed in other cases, he may redeem from such levy or sale at any time within 3 months after the relief is denied, or after final judgment in the action if the relief is granted. If such judgment is in his favor, the amount thereof shall be allowed towards such redemption, notwithstanding a conveyance of such estate by the creditor; and if it is larger than the amount of the levy or sale, and interest, he shall have an execution for the balance.

§2352. Waste prohibited; remedy

No strip or waste shall be made on such estate before or during the pendency of proceedings under section 2351. After final judgment in the action, if relief from the judgment is granted, the plaintiff in such action, besides other remedies, may, within said 3 months, without a tender or demand to account, bring his action, for the redemption of such estate.

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