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CHAPTER 39

Executions and Judicial Sales Generally

ARTICLE 1

General Provisions

**SECTION 15‑39‑10.** Kinds of execution.

 There shall be three kinds of executions, (a) against the property of the judgment debtor, (b) against his person and (c) for the delivery of the possession of real or personal property or such delivery with damages for withholding the property. They shall be deemed the process of the court.

HISTORY: 1962 Code Section 10‑1701; 1952 Code Section 10‑1701; 1942 Code Section 739; 1932 Code Section 739; Civ. P. ‘22 Section 606; Civ. P. ‘12 Section 344; Civ. P. ‘02 Section 305; 1870 (14) 490 Section 309.

**SECTION 15‑39‑20.** Executions of course within ten years.

 Writs of execution for the enforcement of judgments shall conform to this Title. The party in whose favor judgment has been given and, in case of his death, his personal representatives duly appointed may at any time within ten years after the entry of judgment proceed to enforce such judgment as prescribed by this Title.

HISTORY: 1962 Code Section 10‑1702; 1952 Code Section 10‑1702; 1942 Code Section 737; 1932 Code Section 737; Civ. P. ‘22 Section 604; Civ. P. ‘12 Section 342; Civ. P. ‘02 Section 303; 1870 (14) 490 Section 306; 1873 (15) 498 Section 15; 1885 (19) 229.

**SECTION 15‑39‑30.** Issuance of executions; effective period.

 Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

HISTORY: 1962 Code Section 10‑1703; 1952 Code Section 10‑1703; 1942 Code Section 744; 1932 Code Section 774; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

**SECTION 15‑39‑40.** Counties to which execution may be issued.

 When the execution is against the property of the judgment debtor it may be issued to the sheriff of any county in which the judgment is docketed by the clerk of court in which the judgment was originally entered up or by the clerk of court of any county in which the judgment is docketed or transcribed. When it requires the delivery of real or personal property it must be issued to the sheriff of the county in which the property or some part thereof is situated. Executions may be issued at the same time to different counties.

HISTORY: 1962 Code Section 10‑1704; 1952 Code Section 10‑1704; 1942 Code Section 740; 1932 Code Section 740; Civ. P. ‘22 Section 607; Civ. P. ‘12 Section 345; Civ. P. ‘02 Section 306; 1870 (14) 490 Section 310; 1872 (15) 194; 1878 (16) 336, 558; 1884 (18) 708; 1885 (19) 7; 1927 (35) 289; 1929 (36) 1052.

**SECTION 15‑39‑50.** Execution against the person.

 If the action be one in which the defendant might have been arrested, as provided in Section 15‑17‑20, an execution against the person of the judgment debtor may be issued to any county within the jurisdiction of the court after the return of an execution against his property unsatisfied in whole or in part. But no execution shall issue against the person of a judgment debtor unless an order of arrest has been served, as in this Code provided, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by Section 15‑17‑20.

HISTORY: 1962 Code Section 10‑1705; 1952 Code Section 10‑1705; 1942 Code Section 741; 1932 Code Section 741; Civ. P. ‘22 Section 608; Civ. P. ‘12 Section 346; Civ. P. ‘02 Section 307; 1870 (14) 491 Section 311.

**SECTION 15‑39‑60.** Execution against married woman.

 An execution may issue against a married woman, and it shall direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise.

HISTORY: 1962 Code Section 10‑1706; 1952 Code Section 10‑1706; 1942 Code Section 740; 1932 Code Section 740; Civ. P. ‘22 Section 607; Civ. P. ‘12 Section 345; Civ. P. ‘02 Section 306; 1870 (14) 490 Section 310; 1872 (15) 194; 1878 (16) 336, 558; 1884 (18) 708; 1885 (19) 7; 1927 (35) 289; 1929 (36) 1052.

**SECTION 15‑39‑70.** Executions may be taken out by administrators de bonis non.

 When any judgment after a verdict shall be had by or in the name of any executor or administrator, an administrator de bonis non may take out execution upon such judgment.

HISTORY: 1962 Code Section 10‑1707; 1952 Code Section 10‑1707; 1942 Code Section 416; 1932 Code Section 416; Civ. P. ‘22 Section 372; Civ. C. ‘12 Section 3960; Civ. C. ‘02 Section 2856; G. S. 2188; R. S. 2320; 1712 (2) 521.

**SECTION 15‑39‑80.** Contents of executions.

 The execution must be directed to the sheriff or to the coroner when the sheriff is a party or interested, must be attested by the clerk, subscribed by the party issuing it or his attorney and must intelligibly refer to the judgment, stating the court, the county in which the judgment roll or transcript is filed, the names of the parties, the amount of the judgment if it be for money, the amount actually due thereon and the time of docketing in the county to which the execution is issued. It shall require the officer, substantially, as follows:

 (1) If it be against the property of the judgment debtor, to satisfy the judgment out of the personal property of such debtor and, if sufficient personal property cannot be found, out of the real property belonging to him;

 (2) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, to satisfy the judgment out of such property;

 (3) If it be against the person of the judgment debtor, to arrest such debtor and commit him to the jail of the county until he shall pay the judgment or be discharged according to law; or

 (4) If it be for the delivery of the possession of real or personal property, to deliver the possession of such property, particularly describing it, to the party entitled thereto, and in such case it may, at the same time, require the officer to satisfy any costs, damages or rents or profits recovered by the judgment out of the personal property of the party against whom it was rendered and the value of the property for which the judgment was recovered, to be specified therein, or, if a delivery thereof cannot be had and if sufficient personal property cannot be found, then out of the real property belonging to him and it shall, in that respect, be deemed an execution against property.

HISTORY: 1962 Code Section 10‑1708; 1952 Code Section 10‑1708; 1942 Code Section 742; 1932 Code Section 742; Civ. P. ‘22 Section 609; Civ. P. ‘12 Section 347; Civ. P. ‘02 Section 308; 1870 (14) 491 Section 312.

**SECTION 15‑39‑90.** Executions on judgments of inferior courts.

 When judgment shall have been rendered in a court of a magistrate or other inferior court and docketed in the office of the clerk of the circuit court the application for leave to issue execution must be to the circuit court of the county in which the judgment was rendered.

HISTORY: 1962 Code Section 10‑1709; 1952 Code Section 10‑1709; 1942 Code Section 744; 1932 Code Section 744; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

**SECTION 15‑39‑100.** Execution constitutes no lien on personal property prior to levy.

 Executions shall not bind the personal property of the debtor, but personal property shall only be bound by actual attachment or levy thereon for the period of four months from the date of such levy.

HISTORY: 1962 Code Section 10‑1711; 1952 Code Section 10‑1711; 1942 Code Section 744; 1932 Code Section 744; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

**SECTION 15‑39‑110.** Sheriff may break into house in certain cases.

 The sheriff or his deputy may break and enter any house after a request to be permitted to enter such house and a refusal of such request, in order to arrest the person or to seize the goods of anyone in such house, provided, such sheriff or his deputy have process requiring him to arrest such person or seize such goods.

HISTORY: 1962 Code Section 10‑1712; 1952 Code Section 10‑1712; 1942 Code Section 3527; 1932 Code Section 3527; Civ. C. ‘22 Section 2070; Civ. C. ‘12 Section 1177; Civ. C. ‘02 Section 852; G. S. 669; R. S. 732; 1839 (11) 43 Section 16.

**SECTION 15‑39‑120.** Sheriff to keep memorandum of levy; schedule.

 The sheriff shall make a memorandum in writing of the date of every levy and specify the property upon which such levy has been made on the process or in a schedule thereunto annexed. If more than one process be levied on such property reference on each shall be made to such memorandum or schedule.

HISTORY: 1962 Code Section 10‑1713; 1952 Code Section 10‑1713; 1942 Code Section 9068; 1932 Code Section 9068; Civ. C. ‘22 Section 5477; Civ. C. ‘12 Section 3698; Civ. C. ‘02 Section 2614; G. S. 1985; R. S. 2114; 1839 (11) 50 Section 16.

**SECTION 15‑39‑130.** Returns.

 The sheriff, coroner or other officer with whom final process shall be lodged shall, at each regular term of the court from which the execution or process was sued out, during the continuance of its active energy, until full execution thereof be returned, make a return to the office of the clerk of the court of common pleas of his actions and doings thereunder. If he shall have fully executed he shall return the process with the manner of its execution. If he shall have partially executed he shall return on oath to the clerk a statement in writing under his hand of such partial execution with the reason of his failure as to the remainder. If he shall have wholly failed to make execution he shall return on oath a statement in writing under his hand of his failure with the reasons. And in any event on the first day of the term at which the active energy of the process shall cease as provided by law he shall return the process, if it has not been before returned, as fully executed. The return of the officer made as aforesaid shall for all purposes have the same legal effect as if the process had been made returnable to the term succeeding its first lodgment and renewed after each subsequent regular term.

HISTORY: 1962 Code Section 10‑1714; 1952 Code Section 10‑1714; 1942 Code Section 744; 1932 Code Section 744; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

**SECTION 15‑39‑140.** Failure or neglect to make return.

 For failure or neglect to make any of the returns mentioned in Section 15‑39‑130 or for any false return the sheriff or other officer as therein stated shall be subject to rule, attachment, action, penalty and all other consequences provided by law for neglect of duty by executive or judicial officers.

HISTORY: 1962 Code Section 10‑1715; 1952 Code Section 10‑1715; 1942 Code Section 744; 1932 Code Section 744; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

**SECTION 15‑39‑150.** Sheriff must give notice of money collected.

 The sheriff, on the receipt of any money on account of any plaintiff in execution or other person entitled thereto, must within one month give notice in writing of the receipt of such money to such plaintiff or his attorney or other person entitled thereto by personal service or by mail. On failure to do so he shall be liable to pay interest for the money in his hands at the rate of five per cent per month until notice is given.

HISTORY: 1962 Code Section 10‑1716; 1952 Code Section 10‑1716; 1942 Code Section 3528; 1932 Code Section 3528; Civ. C. ‘22 Section 2071; Civ. C. ‘12 Section 1178; Civ. C. ‘02 Section 853; G. S. 670; R. S. 733; 1856 (12) 534.

ARTICLE 3

Discovery; Arrest; Garnishment; Receivers and the Like

**SECTION 15‑39‑310.** Order for discovery of property.

 When an execution against property of the judgment debtor or any of the several debtors in the same judgment issued to the sheriff of the county in which he resides or has a place of business or, if he does not reside in the State, to the sheriff of the county in which a judgment roll is filed is returned unsatisfied in whole or in part the judgment creditor at any time after such return is made is entitled to an order from a judge of the circuit court requiring such judgment debtor to appear and answer concerning his property before such judge at a time and place specified in the order within the county to which the execution was issued. After the issuing of an execution against property and upon proof by affidavit of a party or otherwise, to the satisfaction of the court or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment such court or judge may by an order require the judgment debtor to appear at a specified time and place to answer concerning the same. And such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution.

HISTORY: 1962 Code Section 10‑1721; 1952 Code Section 10‑1721; 1942 Code Section 746; 1932 Code Section 746; Civ. P. ‘22 Section 613; Civ. P. ‘12 Section 351; Civ. P. ‘02 Section 312; 1870 (14) 492 Sections 318, 319; 1919 (31) 236.

**SECTION 15‑39‑320.** Arrest in lieu of discovery order.

 Instead of the order requiring the attendance of the judgment debtor the judge may, upon proof by affidavit or otherwise to his satisfaction that there is danger of the debtor’s leaving the State or concealing himself and that there is reason to believe that he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff of any county in which such debtor may be to arrest him and bring him before such judge. Upon being brought before the judge he may be examined on oath and if it then appears that there is danger of the debtor’s leaving the State and that he has property which he has unjustly refused to apply to such judgment, he may be ordered to enter into an undertaking, with one or more sureties, that he will from time to time attend before the judge as he shall direct and that he will not during the pendency of the proceedings dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison by warrant of the judge as for a contempt.

HISTORY: 1962 Code Section 10‑1722; 1952 Code Section 10‑1722; 1942 Code Section 746; 1932 Code Section 746; Civ. P. ‘22 Section 613; Civ. P. ‘12 Section 351; Civ. P. ‘02 Section 312; 1870 (14) 492 Sections 318, 319; 1919 (31) 236.

**SECTION 15‑39‑330.** Examination of witnesses and debtor.

 On an examination under Sections 15‑39‑310 and 15‑39‑320 either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness.

 No person shall on examination, pursuant to this article, be excused from answering any questions on the ground that his examination will tend to convict him of the commission of a fraud. But his answer shall not be used as evidence against him in any criminal proceeding or prosecution. Nor shall he be excused from answering any question on the ground that he has before the examination executed any conveyance, assignment or transfer of his property for any purpose. But his answer shall not be used as evidence against him in any criminal proceeding or prosecution.

HISTORY: 1962 Code Section 10‑1723; 1952 Code Section 10‑1723; 1942 Code Section 746; 1932 Code Section 746; Civ. P. ‘22 Section 613; Civ. P. ‘12 Section 351; Civ. P. ‘02 Section 312; 1870 (14) 492 Sections 318, 319; 1919 (31) 236.

**SECTION 15‑39‑340.** Debtor of execution debtor may pay debt to sheriff.

 After the issuing of execution against property any person indebted to the judgment debtor may pay to the sheriff the amount of his debt or so much thereof as shall be necessary to satisfy the execution. The sheriff’s receipt shall be a sufficient discharge for the amount so paid.

HISTORY: 1962 Code Section 10‑1724; 1952 Code Section 10‑1724; 1942 Code Section 746; 1932 Code Section 746; Civ. P. ‘22 Section 613; Civ. P. ‘12 Section 351; Civ. P. ‘02 Section 312; 1870 (14) 492 Sections 318, 319; 1919 (31) 236.

**SECTION 15‑39‑350.** Examination of debtors of judgment debtor.

 After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment and upon an affidavit that any person or corporation has property of such judgment debtor or is indebted to him in any amount exceeding ten dollars, the judge may by an order require such person or corporation, or any officer or member thereof, to appear at a specified time and place and answer concerning such property or indebtedness. The judge may also, in his discretion, require notice of such proceeding to be given to any party to the action in such manner as may seem to him proper.

HISTORY: 1962 Code Section 10‑1725; 1952 Code Section 10‑1725; 1942 Code Section 747; 1932 Code Section 747; Civ. P. ‘22 Section 614; Civ. P. ‘12 Section 352; Civ. P. ‘02 Section 314; 1870 (14) 493 Section 320.

**SECTION 15‑39‑360.** Proceedings against joint debtors.

 The proceedings mentioned in Sections 15‑39‑310 to 15‑39‑350 may be taken upon the return of an execution unsatisfied issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which the action was commenced, so far as relates to the joint property of such debtors. All actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in like manner and to like effect.

HISTORY: 1962 Code Section 10‑1726; 1952 Code Section 10‑1726; 1942 Code Section 747; 1932 Code Section 747; Civ. P. ‘22 Section 614; Civ. P. ‘12 Section 352; Civ. P. ‘02 Section 314; 1870 (14) Section 320.

**SECTION 15‑39‑370.** Witnesses may be required to testify.

 Witnesses may be required to appear and testify on any proceedings under this article in the same manner as upon the trial of an issue.

HISTORY: 1962 Code Section 10‑1727; 1952 Code Section 10‑1727; 1942 Code Section 748; 1932 Code Section 748; Civ. P. ‘22 Section 615; Civ. P. ‘12 Section 353; Civ. P. ‘02 Section 315; 1870 (14) 494 Section 321.

**SECTION 15‑39‑380.** Compelling party or witnesses to attend.

 The party or witness may be required to attend before the judge or a master.

HISTORY: 1962 Code Section 10‑1728; 1952 Code Section 10‑1728; 1942 Code Section 749; 1932 Code Section 749; Civ. P. ‘22 Section 616; Civ. P. ‘12 Section 354; Civ. P. ‘02 Section 316; 1870 (14) 494 Section 322; 1979 Act No. 164, Part II, Section 17.

**SECTION 15‑39‑390.** Master shall certify examination to judge.

 If before the master the examination shall be taken by the master and certified to the judge.

HISTORY: 1962 Code Section 10‑1729; 1952 Code Section 10‑1729; 1942 Code Section 749; 1932 Code Section 749; Civ. P. ‘22 Section 616; Civ. P. ‘12 Section 354; Civ. P. ‘02 Section 316; 1870 (14) 494 Section 322; 1979 Act No. 164, Part II, Section 18.

**SECTION 15‑39‑400.** Examinations and answers shall be under oath.

 All examinations and answers before a judge or master under this article shall be on oath, except that when a corporation answers the answer shall be on the oath of an officer.

HISTORY: 1962 Code Section 10‑1730; 1952 Code Section 10‑1730; 1942 Code Section 749; 1932 Code Section 749; Civ. P. ‘22 Section 616; Civ. P. ‘12 Section 354; Civ. P. ‘02 Section 316; 1870 (14) 494 Section 322; 1979 Act No. 164, Part II, Section 19.

**SECTION 15‑39‑410.** Property which may be ordered to be applied to execution.

 The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied.

HISTORY: 1962 Code Section 10‑1731; 1952 Code Section 10‑1731; 1942 Code Section 750; 1932 Code Section 750; Civ. P. ‘22 Section 617; Civ. P. ‘12 Section 355; Civ. P. ‘02 Section 317; 1870 (14) 494 Section 323; 1960 (51) 1716; 1961 (52) 450; 1974 (58) 2879.

**SECTION 15‑39‑420.** Withholding of wages pursuant to foreign garnishment proceeding prohibited under certain circumstances.

 (1) No employer in this State shall withhold any portion of the wages of any employee residing in this State as a result of any garnishment proceedings brought in any court outside of this State unless the creditor first obtains a judgment against such employee growing out of the same indebtedness for which the garnishment proceedings were instituted in a court of competent jurisdiction in South Carolina. The burden of proving the competent jurisdiction of the court shall rest upon the creditor.

 (2) The provisions of this section shall not apply to any debt incurred outside the State of South Carolina by such employee nor shall there be any garnishment of earnings for personal services rendered by the employee regardless of where the debt was incurred.

 (3) Any employer violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars.

HISTORY: 1962 Code Section 10‑1731.1; 1967 (55) 94; 1974 (58) 2879.

**SECTION 15‑39‑430.** Judge may appoint receiver.

 The judge may also, by order, appoint a receiver of the property of the judgment debtor in the same manner and with the like authority as if appointment was made by the court, according to Section 15‑65‑10. But before the appointment of such receiver the judge shall ascertain, if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if such proceedings are so pending the plaintiff therein shall have notice to appear before him and shall likewise have notice of all subsequent proceedings in relation to such receivership. No more than one receiver of the property of a judgment debtor shall be appointed.

HISTORY: 1962 Code Section 10‑1732; 1952 Code Section 10‑1732; 1942 Code Section 751; 1932 Code Section 751; Civ. P. ‘22 Section 618; Civ. P. ‘12 Section 356; Civ. P. ‘02 Section 318; 1870 (14) 494 Section 324.

**SECTION 15‑39‑440.** Prohibition of transfer or of interference with property.

 The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution and any interference therewith.

HISTORY: 1962 Code Section 10‑1733; 1952 Code Section 10‑1733; 1942 Code Section 751; 1932 Code Section 751; Civ. P. ‘22 Section 618; Civ. P. ‘12 Section 356; Civ. P. ‘02 Section 318; 1870 (14) 494 Section 324.

**SECTION 15‑39‑450.** Filing and effect of order appointing receiver.

 Whenever the judge shall grant an order for the appointment of a receiver of the property of the judgment debtor the order shall be filed in the office of the clerk of the court of common pleas of the county in which the judgment roll in the action or the transcript from the magistrate’s judgment upon which the proceedings are taken is filed. The clerk shall record the order in a book, to be kept for that purpose in his office to be called “book of orders appointing receivers of judgment debtors” and shall note the time of the filing of such order therein. A certified copy of the order shall be delivered to the receiver named therein, and he shall be vested with the property and effects of the judgment debtor from the time of the filing and recording of the order as aforesaid. The receiver of the judgment debtor shall be subject to the direction and control of the court in which the judgment was obtained or docketed upon which the proceedings are founded.

 A certified copy of the order shall also be filed and recorded in the office of the register of deeds of the county in which any real estate of such judgment debtor sought to be affected by such order is situated and also in the office of the register of deeds of the county in which such judgment debtor resides.

HISTORY: 1962 Code Section 10‑1734; 1952 Code Section 10‑1734; 1942 Code Section 751; 1932 Code Section 751; Civ. P. ‘22 Section 618; Civ. P. ‘12 Section 356; Civ. P. ‘02 Section 318; 1870 (14) 494 Section 324; 1997 Act No. 34, Section 1.

**SECTION 15‑39‑460.** Proceedings on claims of others to property or on denial of indebtedness.

 If it appears that a person or corporation alleged to have property of the judgment debtor or indebted to him claims an interest in the property adverse to him or denies the debt such interest or debt shall be recoverable only in an action against such person or corporation by the receiver. But the judge may, by order, forbid a transfer or other disposition of such property or interest until a sufficient opportunity be given to the receiver to commence the action and prosecute it to judgment and execution. Such order may be modified or dissolved at any time by the judge granting it on such security as he shall direct.

HISTORY: 1962 Code Section 10‑1735; 1952 Code Section 10‑1735; 1942 Code Section 752; 1932 Code Section 752; Civ. P. ‘22 Section 619; Civ. P. ‘12 Section 357; Civ. P. ‘02 Section 319; 1870 (14) 495 Section 325.

**SECTION 15‑39‑480.** Costs of proceeding.

 The judge may allow to the judgment creditor or to any party so examined, whether a party to the action or not, witness fees and disbursements and a fixed sum in addition, not exceeding thirty dollars, as costs.

HISTORY: 1962 Code Section 10‑1737; 1952 Code Section 10‑1737; 1942 Code Section 754; 1932 Code Section 754; Civ. P. ‘22 Section 621; Civ. P. ‘12 Section 359; Civ. P. ‘02 Section 321; 1870 (14) 495 Section 327.

**SECTION 15‑39‑490.** Punishment for contempt.

 If any person, party or witness disobeys an order of the judge or master, duly served, such person, party or witness may be punished by the judge or master as for a contempt. In all cases of commitment under this chapter the person committed may, in case of inability to perform the act required or to endure the imprisonment, be discharged from imprisonment by the court or judge committing him or the court in which the judgment was rendered, on such terms as may be just.

HISTORY: 1962 Code Section 10‑1738; 1952 Code Section 10‑1738; 1942 Code Section 755; 1932 Code Section 755; Civ. P. ‘22 Section 622; Civ. P. ‘12 Section 360; Civ. P. ‘02 Section 322; 1870 (14) 495 Section 328; 1979 Act No. 164, Part II, Section 20.

ARTICLE 5

Judicial Sales Generally

**SECTION 15‑39‑610.** Property taken under execution shall be sold.

 When any sheriff or other officer shall take the lands, tenements, goods and chattels of any person whatsoever by virtue of any execution and the owner of such lands, tenements, goods and chattels shall not, within five days after such taking, satisfy the debt, damages and costs of the party issuing such execution, such sheriff or officer shall and may sell, by auction, the lands, tenements, goods and chattels so taken or so much thereof as shall be sufficient to satisfy the judgment for the best price that can be got for them.

HISTORY: 1962 Code Section 10‑1751; 1952 Code Section 10‑1751; 1942 Code Section 9069; 1932 Code Section 9069; Civ. C. ‘22 Section 5478; Civ. C. ‘12 Section 3699; Civ. C. ‘02 Section 2615; G. S. 1986; R. S. 2115; 1785 (7) 229.

**SECTION 15‑39‑620.** Estates held in trust may be sold.

 All estate, real or personal, which is held in trust for him against whom execution is sued may be seized by the sheriff or officer to whom the writ is delivered and sold as the property of him that is entitled to the trust, in the same manner as if such property were held in his own name.

HISTORY: 1962 Code Section 10‑1752; 1952 Code Section 10‑1752; 1942 Code Section 9067; 1932 Code Section 9067; Civ. C. ‘22 Section 5476; Civ. C. ‘12 Section 3697; Civ. C. ‘02 Section 2613; G. S. 1984; R. S. 2113; 1712 (2) 527.

**SECTION 15‑39‑630.** Where and by whom sales made.

 Property adjudged to be sold must be sold in the county in which it lies, except as otherwise provided in this article, and in the manner herein provided. All sales of real estate under the orders of the probate court shall be made by the judge of probate. All sales under the order of the court when the title is to be made by the clerk of the circuit court shall be made by the clerk. In those counties in which the office of master exists the master shall make all sales ordered by the court in granting equitable relief, conformable to the practice of the circuit court or to the practice of the courts of equity in this State before such courts were abolished. And whenever real estate is adjudged to be sold by a master, such sale may take place by consent of the parties to the cause or their attorneys, or, when infants are parties, by consent of their guardians ad litem or their attorneys in any county which the court may direct. Whenever the court of common pleas in any county shall have acquired jurisdiction over real estate lying in another county the master for the county in which the action is brought may sell such real estate in the county in which the land is situated. But when such land is contained in one tract or adjoining tracts lying in more than one county the land may be sold in whatever county the court may fix, and the advertisement shall appear in the county or counties in which the land is situate and in which the land is to be sold. All other judicial sales shall be made by the sheriffs.

HISTORY: 1962 Code Section 10‑1753; 1952 Code Section 10‑1753; 1942 Code Section 740; 1932 Code Section 740; Civ. P. ‘22 Section 607; Civ. P. ‘12 Section 345; Civ. P. ‘02 Section 306; 1870 (14) 490 Section 310; 1872 (15) 194; 1878 (16) 336, 558; 1884 (18) 708; 1885 (19) 7; 1927 (35) 289; 1929 (36) 1052; 1958 (50) 1957.

**SECTION 15‑39‑635.** Judicial sales by referees.

 In the counties which do not have a master‑in‑equity, judicial sales of real property which a master has authority to perform may be performed by a referee in those matters referred to him by the presiding judge of the court of common pleas, or by a referee appointed by the presiding judge for this purpose.

 The provisions of law governing these sales by masters also apply to referees acting pursuant to this section. These referees have the same powers and are entitled to the same fees as masters when performing these sales.

 Judicial sales of real property by referees prior to the effective date of this section, in those counties that did not have a master‑in‑equity and which sales a master had authority to perform, are confirmed, ratified, and declared valid.

HISTORY: 1989 Act No. 65, Section 1.

**SECTION 15‑39‑640.** Sheriff shall make judicial sales; fees.

 All judicial sales shall be made by the sheriff, unless otherwise provided by law. In all such sales made by him his fees shall be such as are allowed by law on sales under executions issuing from the court of common pleas.

HISTORY: 1962 Code Section 10‑1754; 1952 Code Section 10‑1754; 1942 Code Section 3542; 1932 Code Section 3542; Civ. C. ‘22 Section 2085; Civ. C. ‘12 Section 1192; Civ. C. ‘02 Section 867; G. S. 691; R. S. 746; 1870 (14) 324 Section 2; 1878 (16) 336; 1891 (20) 1250; 1931 (37) 2.

**SECTION 15‑39‑650.** Sheriff shall advertise sale of property.

 The sheriff of every county in this State shall, before he exposes any lands or tenements which he may be directed to sell by virtue of any execution or mortgage, publicly advertise the lands or tenements three weeks immediately previous to the sale day or days on which he means to expose them for sale.

 Personal property shall be advertised for fifteen days.

HISTORY: 1962 Code Section 10‑1758; 1952 Code Section 10‑1758; 1942 Code Section 9070; 1932 Code Section 9070; Civ. C. ‘22 Section 5479; Civ. C. ‘12 Section 3700; Civ. C. ‘02 Section 2616; G. S. 1987; R. S. 2116; 1797 (5) 305; 1839 (11) 54; 1879 (17) 192.

**SECTION 15‑39‑660.** Contents of advertisement of sale; manner of publication.

 The sheriff shall specify in the advertisement the property to be sold, the time and place of sale, the name of the owner of the property and the party at whose suit the sale is to be made and shall publish the advertisement at three public places in the county, one of which shall be at the courthouse door, and publication shall also be made in some gazette, as provided in Section 15‑39‑650, before the day of sale, if the sale is to be made in a county in which a newspaper may be printed.

HISTORY: 1962 Code Section 10‑1759; 1952 Code Section 10‑1759; 1942 Code Section 9071; 1932 Code Section 9071; Civ. C. ‘22 Section 5480; Civ. C. ‘12 Section 3701; Civ. C. ‘02 Section 2617; G. S. 1988; R. S. 2117; 1791 (7) 263; 1796 (7) 283; 1839 (11) 54; 1849 (11) 598; 1933 (38) 441.

**SECTION 15‑39‑680.** Judicial sale days.

 The regular day of judicial sales is the first Monday in each month except when the first Monday in any month is a legal holiday in which case the sale day is on the Tuesday next succeeding the holiday. However, the sheriff may sell personal property on any day after fifteen days’ advertisement at any convenient place in his county to be designated in the advertisement. If there is not time to dispose of all the property on sale day the next day following is also a regular sale day, if by public outcry on sale day notice of sale on the next day has been given. Judicial sales of property may be conducted at any other time when so ordered by a court of competent authority or when so directed by an order of reference.

HISTORY: 1962 Code Section 10‑1761; 1952 Code Section 10‑1761; 1942 Code Section 9072; 1932 Code Section 9072; Civ. C. ‘22 Section 5481; Civ. C. ‘12 Section 3702; Civ. C. ‘02 Section 2618; G. S. 1988; R. S. 2118; 1791 (7) 263; 1839 (11) 54; 1875 (15) 850; 1918 (30) 776; 1931 (37) 95; 1961 (52) 616; 1987 Act No. 27, Section 1.

**SECTION 15‑39‑690.** Hours of sale.

 The hours of sale shall be between eleven and five o’clock. But sales shall not be held at any time after notice given by the sheriff that the sales for the day have been closed.

HISTORY: 1962 Code Section 10‑1762; 1952 Code Section 10‑1762; 1942 Code Section 9077; 1932 Code Section 9077; Civ. C. ‘22 Section 5484; Civ. C. ‘12 Section 3705; Civ. C. ‘02 Section 2620; G. S. 1991; R. S. 2120; 1791 (7) 263; 1839 (11) 54.

**SECTION 15‑39‑700.** Place of sales.

 The place of sheriff’s sales, as to real estate, shall be at the courthouse of the county. Personalty may be sold at the place whereon it may be found by the sheriff upon levy or such other more convenient place as may be selected.

HISTORY: 1962 Code Section 10‑1764; 1952 Code Section 10‑1764; 1942 Code Section 9073; 1932 Code Section 9073; Civ. C. ‘22 Section 5482; Civ. C. ‘12 Section 3703; Civ. C. ‘02 Section 2619; G. S. 1990; R. S. 2119; 1839 (11) 54.

**SECTION 15‑39‑710.** Sheriff’s execution sales shall be for cash; resale.

 Every sheriff’s sale made by virtue of the directions of an execution shall be for cash. If the purchaser shall fail to comply with the terms aforesaid the sheriff’s shall proceed to resell at the risk of the defaulting purchaser either on the same or some subsequent sale day, as the plaintiff may direct, and, in the absence of any direction by the plaintiff, the sheriff shall resell on the same day, if practicable, and if not on the next succeeding sale day, making in every such case proclamation that he is reselling at the risk of such defaulting former purchaser.

HISTORY: 1962 Code Section 10‑1769; 1952 Code Section 10‑1769; 1942 Code Section 9078; 1932 Code Section 9078; Civ. C. ‘22 Section 5485; Civ. C. ‘12 Section 3706; Civ. C. ‘02 Section 2621; G. S. 1992; R. S. 2121; 1791 (7) 263; 1839 (11) 54.

**SECTION 15‑39‑720.** Upset bids within thirty days on foreclosure or execution sale.

 In all judicial sales of real estate for the foreclosure of mortgages and sales in execution the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth day after such sale, exclusive of the day of sale. Within such thirty day period any person other than the highest bidder at the sale or any representative thereof in foreclosure and execution suits may enter a higher bid upon complying with the terms of sale by making any necessary deposit as a guaranty of his good faith, and thereafter within such period any person, other than such highest bidder at the sale or any representative thereof, in foreclosure suits may in like manner raise the last highest bid, and the successful purchaser shall be deemed to be the person who submitted the last highest bid within such period and made the necessary deposit or guaranty. But the mortgagee or his representative shall enter such bid as he desires at the time the sale is made, and he and all persons acting in his behalf shall be precluded from entering any other bid in any amount at any other time except the single or last bid made by him or in his behalf at the sale. If the thirtieth day falls on Sunday the bidding shall be closed on the Monday immediately following.

 The bidding shall be reopened by the officer making the sale on the thirtieth day after the sale, exclusive of the day of the sale, at eleven o’clock in the forenoon and the bidding shall be allowed to continue until the property shall be knocked down in the usual custom of auction to the successful highest bidder complying with the terms of sale. The sales officer shall announce the sales about to be closed and shall receive the final bids in such sales in the order determined by him.

HISTORY: 1962 Code Section 10‑1770; 1952 Code Section 10‑1770; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 156, 202.

**SECTION 15‑39‑730.** Upset bids in other judicial sales.

 In judicial sales other than foreclosures or in execution the bidding shall not remain open but shall be closed upon the date of sale unless there be objection at or prior to the hearing at which the decree is rendered to such closing by one or more parties to the suit, in which case the question shall be within the discretion of the court. In sales which involve both partition and foreclosure the bidding shall remain open as in foreclosure sales unless the right to a deficiency judgment is expressly waived.

HISTORY: 1962 Code Section 10‑1771; 1952 Code Section 10‑1771; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 156, 202.

**SECTION 15‑39‑740.** Deposits by bidders.

 In no decree of sale or order thereunder shall there be a requirement for a deposit of cash or other guaranty of good faith prior to the conclusion of the bidding at any judicial sale of real estate, and such deposit or guaranty as may be required at the conclusion of the bidding and of any person who thereafter raises the bid within the period mentioned in Sections 15‑39‑720 and 15‑39‑730 shall be five per cent of the bid or some lesser percentage thereof.

HISTORY: 1962 Code Section 10‑1772; 1952 Code Section 10‑1772; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 202.

**SECTION 15‑39‑750.** Return of deposit when bid raised.

 When any bid is raised as provided in Section 15‑39‑720 the deposit theretofore made by the prior high bidder shall be returned, with written notice to the effect that his bid has been raised, to him or his attorney personally or by mail within two days thereafter, and he shall have no further interest in the bid or sale.

HISTORY: 1962 Code Section 10‑1773; 1952 Code Section 10‑1773; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 202.

**SECTION 15‑39‑760.** Provisions of Sections 15‑39‑720 to 15‑39‑750 inapplicable to certain foreclosure suits.

 The provisions of Sections 15‑39‑720 to 15‑39‑750 shall not apply to any suit brought for foreclosure if the complaint therein states that no personal or deficiency judgment is demanded and that any right to such judgment is expressly waived or when the plaintiff is suing in a representative or fiduciary capacity or a defendant is sued in such capacity and sets up a right to affirmative relief in his answer, makes the beneficiary or a member of the class of beneficiaries a party to the action and requests in the complaint or answer leave of the court to waive any right to a personal or deficiency judgment, and such leave is granted by the court and incorporated in the decree. But in any such case the sales officer shall state in the advertisement of sale that no personal or deficiency judgment is demanded and that the bidding will not remain open after the sale but that compliance with the bid may be made immediately.

HISTORY: 1962 Code Section 10‑1774; 1952 Code Section 10‑1774; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 156, 202.

**SECTION 15‑39‑770.** Compensation of officer making sale of real estate.

 The officer making judicial sales of real estate may charge for services rendered in making such sales and in paying over the proceeds of such sales to the parties entitled thereto and for rendering all services in connection with such sales for which a commission fee is authorized by law a fee of seven dollars in case of such sale for a price of five hundred dollars or less, and in the case of a sale for more than five hundred dollars he shall be entitled to an additional fee of one per cent of the excess. No fees, charges or commissions, other than those herein authorized, may be charged by the officer making such sales, except that if such officer acted as referee or master in any case and took testimony, made a report or performed any other service prior to the order or decree of sale he shall be entitled to the regular legal fees therefor. When such officer is upon a salary basis of compensation all such fees, charges and commissions shall be paid to the county treasurer as may be provided by law.

HISTORY: 1962 Code Section 10‑1775; 1952 Code Section 10‑1775; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 202.

**SECTION 15‑39‑780.** Sale by debtor of property subject to levy and sale; proceeds shall be paid over to sheriff.

 The entire proceeds of a sale of property subject to levy and sale made by the judgment debtors are to be paid over by such judgment debtors to the sheriff in whose office such judgments, executions or decrees are lodged, to be applied by the sheriff towards the satisfaction of such judgments, executions or decrees.

HISTORY: 1962 Code Section 10‑1781; 1952 Code Section 10‑1781; 1942 Code Section 9079; 1932 Code Section 9081; Civ. C. ‘22 Section 5486; Civ. C. ‘12 Section 3707; Civ. C. ‘02 Section 2622; G. S. 687; R. S. 2122; 1871 (14) 604.

**SECTION 15‑39‑790.** Sale by debtor of property subject to levy and sale; confirmation of sale and deed.

 If no objection as to the price at which the property may have been sold by the judgment debtors shall be made in writing by either of the judgment creditors and filed with the sheriff within three months from and after the time such payment shall have been made, the sale shall thereupon be considered confirmed, and the sheriff shall make the following endorsement on the back of the deed of conveyance, viz.: “No objection having been filed in my office to the within bargain and sale within the time prescribed by law this bargain and sale is therefore confirmed.” Such endorsement shall be dated and signed officially by the sheriff.

HISTORY: 1962 Code Section 10‑1782; 1952 Code Section 10‑1782; 1942 Code Section 9079; 1932 Code Section 9081; Civ. C. ‘22 Section 5486; Civ. C. ‘12 Section 3707; Civ. C. ‘02 Section 2622; G. S. 687; R. S. 2122; 1871 (14) 604.

**SECTION 15‑39‑800.** Sale by debtor of property subject to levy and sale; proceedings if judgment creditors object to sale.

 Should any of the judgment creditors object to the price at which any of the property may have been sold and file such notice with the sheriff within the time mentioned in Section 15‑39‑790 the sheriff shall immediately proceed to levy upon and offer for sale such property, proceeding, in all respects, according to the law in regard to levy and sale by the sheriff. If the highest bid made for such property upon such sale shall not be more than the amount of the indebtedness which had been cancelled by the sale made by the debtor the sheriff shall withdraw such property from sale, and the creditor who may have filed his objection shall be required to pay all costs and expenses that accrued in consequence thereof.

HISTORY: 1962 Code Section 10‑1783; 1952 Code Section 10‑1783; 1942 Code Section 9080; 1932 Code Section 9082; Civ. C. ‘22 Section 5487; Civ. C. ‘12 Section 3708; Civ. C. ‘02 Section 2623; G. S. 688; R. S. 2123; 1871 (14) 605.

**SECTION 15‑39‑810.** Sale by debtor of property subject to levy and sale; endorsement on conveyance in case of objection.

 Should any judgment creditor so object the sheriff shall make the following endorsement on the back of the conveyance made by the debtor, viz.: “Objection having been filed in my office by \_,judgment creditor, I levied upon and exposed for sale the property within named; and failing to receive a higher bid than the amount of indebtedness cancelled by the proceeds of the within bargain and sale, this sale is therefore confirmed.” Such endorsement shall be signed by the sheriff.

HISTORY: 1962 Code Section 10‑1784; 1952 Code Section 10‑1784; 1942 Code Section 9081; 1932 Code Section 9083; Civ. C. ‘22 Section 5488; Civ. C. ‘12 Section 3709; Civ. C. ‘02 Section 2624; G. S. 689; R. S. 2124; 1871 (14) 605.

**SECTION 15‑39‑820.** Sale by debtor of property subject to levy and sale; proceedings when sale by sheriff brings more.

 In the event that the property, when so exposed for sale by the sheriff as provided for in Section 15‑39‑800, should bring more than the amount of the indebtedness cancelled by the proceeds of the sale made by the debtor the purchaser from the debtor shall be refunded the amount paid by him with interest from the time of payment, and the bargain and sale made by the debtor rescinded, and titles executed by the sheriff to the purchaser at his sale. After deducting the costs and expenses by reason of the levy and sale the remainder shall be applied, according to law, towards satisfaction of the judgments or executions in his office.

HISTORY: 1962 Code Section 10‑1785; 1952 Code Section 10‑1785; 1942 Code Section 9082; 1932 Code Section 9084; Civ. C. ‘22 Section 5489; Civ. C. ‘12 Section 3710; Civ. C. ‘02 Section 2625; G. S. 690; R. S. 2125; 1871 (14) 605.

**SECTION 15‑39‑830.** Conveyance after sale.

 Upon a judicial sale being made and the terms complied with the officer making the sale must execute a conveyance to the purchaser which shall be effectual to pass the rights and interests adjudged to be sold.

HISTORY: 1962 Code Section 10‑1786; 1952 Code Section 10‑1786; 1942 Code Section 740; 1932 Code Section 740; Civ. P. ‘22 Section 607; Civ. P. ‘12 Section 345; Civ. P. ‘02 Section 306; 1870 (14) 490 Section 310; 1872 (15) 194; 1878 (16) 336, 558; 1884 (18) 708; 1885 (19) 7; 1927 (35) 289; 1929 (36) 1052.

**SECTION 15‑39‑840.** Conveyances of real estate sold under execution.

 When any sheriff or other officer makes a conveyance of any real estate sold by virtue of a tax execution or other execution the conveyance shall contain the name of the person owning the property executed on, the name of the judgment creditor executing, the date of execution and the date of sale.

HISTORY: 1962 Code Section 10‑1787; 1952 Code Section 10‑1787; 1942 Code Section 9083; 1932 Code Section 9079; 1929 (36) 277.

**SECTION 15‑39‑850.** Successors of selling officers may make title.

 In all cases in which any sheriff, probate judge, clerk of court or master shall have legally sold any real or personal estate and such sheriff, probate judge, clerk of court or master shall die, resign or otherwise go out of office before he shall have executed title therefor to the purchaser, any subsequent sheriff, probate judge, clerk of court or master of the same county, upon the terms of sale being complied with or satisfactory evidence produced that they have been complied with, may make and execute good and sufficient title to the purchaser for the property so sold.

HISTORY: 1962 Code Section 10‑1788; 1952 Code Section 10‑1788; 1942 Code Section 3541; 1932 Code Section 3541; Civ. C. ‘22 Section 2084; Civ. C. ‘12 Section 1191; Civ. C. ‘02 Section 866; G. S. 686; R. S. 745; 1899 (23) 44.

**SECTION 15‑39‑860.** Recording and indexing of execution conveyances.

 When any conveyance under Section 15‑39‑840 is offered to any clerk of court or register of deeds of this State for recording he shall index it under the name of the officer who made the conveyance, the name of the person whose property was executed on, as grantor, and the name of the person who purchased, as grantee.

HISTORY: 1962 Code Section 10‑1789; 1952 Code Section 10‑1789; 1942 Code Section 9083‑1; 1932 Code Section 9079; 1929 (36) 277; 1997 Act No. 34, Section 1.

**SECTION 15‑39‑870.** Judicial sales shall be res judicata as to innocent purchasers, even without confirmation.

 Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court.

HISTORY: 1962 Code Section 10‑1790; 1952 Code Section 10‑1790; 1942 Code Section 9084; 1932 Code Section 9080; 1923 (33) 126.

**SECTION 15‑39‑880.** Certain liens extinguished by sale when lien creditor is a party to proceeding.

 No lien created by operation of law or agreement of the parties whether of record or authorized by law to be entered of record in any office of any clerk of court or register of mesne conveyance in this State or any transcript, extension, renewal or revival thereof shall constitute a lien or attach or reattach as a lien on real property of the lien debtor or real property in which the lien debtor has an interest after a public sale of such real property at any execution or judicial sale in any action or special proceeding to which the lien creditor is duly made a party as provided by law. But this section and Section 15‑39‑890 shall not be construed to affect any prior mortgage lien not foreclosed in any such action or special proceeding and shall not be construed to require the foreclosure of any such prior mortgage lien. And this section and Section 15‑39‑890 shall not apply to tax execution sales.

HISTORY: 1962 Code Section 10‑1791; 1952 Code Section 10‑1791; 1942 Code Section 9084‑1; 1935 (39) 503.

**SECTION 15‑39‑890.** Reacquisition of property by lien debtor.

 No lien on real property barred by a public sale of such real property at any execution or judicial sale heretofore made in the manner provided in Section 15‑39‑880, nor any transcript, extension, renewal or revival thereof, shall constitute a lien or attach or reattach as a lien on the real property so sold, or any part thereof, if acquired by the lien debtor subsequent to May 11, 1935.

HISTORY: 1962 Code Section 10‑1792; 1952 Code Section 10‑1792; 1942 Code Section 9084‑2; 1935 (39) 503.

**SECTION 15‑39‑900.** Proceeds paid to prior judgment lienor.

 The sheriff shall pay over the proceeds of sale of any real estate sold by him to any judgment creditor having a prior lien thereon.

HISTORY: 1962 Code Section 10‑1793; 1952 Code Section 10‑1793; 1942 Code Section 3540; 1932 Code Section 3540; Civ. C. ‘22 Section 2083; Civ. C. ‘12 Section 1190; Civ. C. ‘02 Section 865; G. S. 685; R. S. 744; 1839 (11) 55 Section 60.