

[www.kmkcollections.com](http://www.kmkcollections.com)

**Washington Building  
Barnabas Business Center  
4650 N. Port Washington Road  
Milwaukee, WI 53212  
Telephone: 414-962-5110  
Facsimile: 414-962-8725**

## **The Remedy of Sheriff's Execution**

Once a judgment has been entered against a debtor, the most aggressive and cost-effective remedy is often that of Execution by Sheriff against the available assets of the judgment debtor. The requirements and details of the remedy of Sheriff's execution vary from state to state and are set out by applicable statutes in each state. In general, the "execution" is a court order authorizing the sheriff to seize available non-exempt assets of the debtor and to conduct a sheriff's sale to liquidate such assets in order to generate funds to pay the creditor on its judgment. The court order is obtained from the court which originally rendered the judgment. It is ordinarily available upon payment of a reasonable fee after the judgment is in place. In some states, a certain number of days must transpire after the judgment is docketed before the court will issue an execution. In some states, the execution is automatically issued when judgment is entered.

*"in one instance, where the debtor himself purchased the assets at the Sheriff's Sale, we re-seized the same assets and resold them again at another Sheriff's Sale"*

### **Execution Without Seizure**

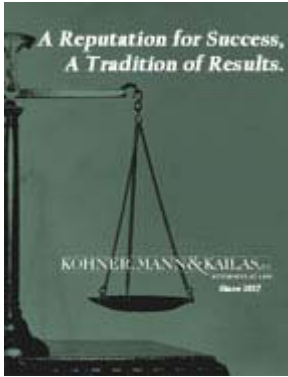
Once the collection attorney arranges for the Execution and sends it to the local Sheriff with direction to seize, the Sheriff will ordinarily travel to the debtor location and exhibit the Execution to the debtor, making demand for payment of the judgment. If payment or suitable arrangements for payment are made, the Sheriff collects the entire judgment without seizure, along with costs and interest. When concluded, the Sheriff remits the proceeds to the attorney for the creditor, bringing the procedure to a successful conclusion without the severity, delay and additional costs to the debtor, of actual seizure.

### **Execution With Seizure of Assets**

If voluntary payment is not obtained, the Sheriff advises the debtor of the scheduling of a "levy" (seizure) of debtor's assets and resulting Sheriff's Sale. An actual seizure can be made without warning, if necessary and advisable. Ordinarily, a bond (to protect and indemnify the Sheriff's Department against lawsuits) is required by the Sheriff's Department, and provided for, pursuant to the statute, before actual seizure will be undertaken by the Sheriff's Department. The creditor must pay the bond premium as a cost of seizure, but it is recoverable if the debtor is collectible.

As a practical matter, the creditor and its attorneys must have some information as to the identification and location of the assets in order to enable the Sheriff to proceed with actual seizure. Moreover, the creditor's attorney will ordinarily investigate security interests or other liens which may be attached to the property in order to discover what "equity" or value the debtor may have in the assets being seized and sold. This information enables the attorney for the creditor to

intelligently decide how much cost and expense to invest into the process of the execution, and to intelligently choose what is to be seized, what storage is "reasonable", what advertising costs should be incurred to promote attendance at the sale, and possibly what bid to make at the sale. There is no substitute for experienced collection attorneys, in the effective handling of such considerations. The procedure must be "cost effective" and of "value" in the collection process.



The procedures for the Sheriff's execution against personal property are ordinarily quite different from the procedures for real estate: Personal property is ordinarily transported to a place of safekeeping under the legal custody of the Sheriff, which location ordinarily becomes the site for the Sheriff's liquidation sale of those assets. Storage facilities can be on public property or private property contracted by the Sheriff.

Seizure of real estate is normally effected by the posting of a notice on the real estate and by a proper notice filed in the public real estate recording system for that jurisdiction. Since real estate is "attached to the land", safekeeping is not a problem as it is with personal property.

In spite of inflexibility in the statutory process for the seizure of assets, the experienced collection attorney can find many opportunities to "tailor the process" to result in maximum leverage against a debtor in order to obtain payment of the judgment through the Sheriff's Department. For instance, where the amount of the judgment is small in relation to the costs of seizing, transporting and storing assets, the assets can often be seized and "sealed" in place at the debtor's business location, and the Sheriff's Sale can be scheduled at that same location for a minimum of expenditure. Absolute security against theft, including "insider" theft, is not necessarily essential under such circumstances where cost avoidance is paramount. Our firm has found that execution seizure by the Sheriff is extremely effective in Wisconsin where the Sheriff's Department will seize and secure the business premises of a business owner, who is otherwise "reluctant" to pay a judgment. Somehow, the money seems to appear "out of thin air" when the Sheriff begins seizing and sealing the premises!

Another important element is the choice of exactly what assets to seize and liquidate. The debtor's place of business may hold bulky, relatively low-value items that are not worth seizing or storing for liquidation sale, such as shelf units or useless cabinets. On the other hand, the debtor's cash register and active file cabinet and desk, if immediately tagged and seized, create a much more powerful pressure for payment arrangements, since the removal of these items may force a termination of the debtor's business operations. The trick is to avoid excessive storage and transport expenses to minimize the risk and expense to the creditor.

### **Sheriff Sale Procedures**

Statutes ordinarily prescribe the time deadlines for the posting of notice in public locations and the newspaper publication of notice. Also, notice to the debtor and to all secured creditors on the assets seized is usually required, and is advisable to avoid subsequent lawsuits against the creditor.

On the day of the sale, the Sheriff conducts the bidding, stating that the assets are about to be auctioned subject to existing liens (prior in time and priority to the judgment creditor), if any, and that the auction will be either in bulk, or in separate lots, or possibly both, if circumstances indicate.

The Sheriff sets out the other normal ground rules of the auction as to the amount of cash required for the bid and the deadline for the payment of the balance, removal of assets sold, etc.

The creditor can “protect” his investment in the proceedings and the judgment amount by being prepared, where appropriate, to place the proper “minimum” bid on the assets. This should only be considered if there are no worthwhile bids and yet the creditor can utilize or otherwise get value in buying the assets.

Keep in mind that there is no restriction to using the remedy once more than once! Our firm has had success on several occasions where a seizure of business has not resulted in total payment, due to possibly low bids at the Sheriff’s Sale. We then seize additional assets for another Sheriff’s Sale. Or, in one instance, where the debtor himself purchased the assets at the Sheriff’s Sale, we re-seized the same assets and resold them again at another Sheriff’s Sale!



There is no substitute for experience in creative and aggressive use of the Execution. In some states, execution must be accomplished within one year or some other time period in order to preserve the lien of judgment docketed subsequently against the same debtor on real estate. Execution must be “timely”, or lost to the creditor.

As to priority of the judgment lien with other creditors, the date of the judgment docketing generally controls the priority of the lien as to real estate, and the date of actual Sheriff seizure controls priority on debtor’s personal property. Clearly, if the creditor is not knowledgeable and willing to “bite the bullet” early enough, the competing interests of more timely and more aggressive creditors will deplete the debtor’s assets and the late—laggard creditors may end up with all judgment and post-judgment costs **without** the **rewards** of collection and recovery. As the saying goes, “the early bird gets the worm.”

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### ***About KMK Collections***

KMK Collections is a division of **Kohner, Mann & Kailas, S.C.**, a law firm founded in 1937 as a result of a conviction that businesses deserved more aggressive and cost-effective advocacy for their interests and contractual rights. Over 70 years as leaders in debt liquidation and commercial law, Kohner, Mann & Kailas, S.C. and KMK Collections have earned an industry-wide reputation. Each year we handle many thousands of commercial contract and collection matters for the liquidation of commercial debt and recovery of goods and services provided, delivering the consistently exemplary results that our American and international clientele has come to rely upon and expect of us. **Kohner, Mann & Kailas, S.C.**, is a business law firm listed in Martindale-Hubbell’s Bar Register of Preeminent Lawyers that provides exemplary legal service in all areas of law encountered by businesses in the normal course of their operations and growth.