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6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF NEVADA**

8 IN RE: CASE NO. BK-N-16-50644-BTB
9 JAZI GHOLAMREZA ZANDIAN, CHAPTER 15
10 Debtor.

11 FRED SADRI, AS TRUSTEE FOR THE Adv. Proc. No. 17-05016-BTB
12 STAR LIVING TRUST, DATED APRIL
13 14, 1997; RAY KOROGHLI AND
14 SATHSOWI T. KOROGHLI, AS
15 MANAGING TRUSTEES FOR
16 KOROGHLI MANAGEMENT TRUST,
17 Plaintiffs,

18 v.
19 JED MARGOLIN; JAZI GHOLALREZA
20 ZANDIAN; and all other parties claiming
21 an interest in the real properties described
22 in this action,
23 Defendants.

24 PATRICK CANET,
25 Counterclaimant,

**CROSS-CLAIMANT PATRICK
CANET'S OPPOSITION TO CROSS-
DEFENDANT JED MARGOLIN'S
MOTION FOR SUMMARY
JUDGMENT**

26 v.
27 FRED SADRI, INDIVIDUALLY AND AS
28 TRUSTEE FOR THE STAR LIVING
TRUST; RAY KOROGHLI,
INDIVIDUALLY, RAY KOROGHLI
AND SATHSOWI T. KOROGHLI, AS
MANAGING TRUSTEES FOR
KOROGHLI MANAGEMENT TRUST,
Counter-defendants.

**COUNTER MOTION FOR SUMMARY
JUDGMENT**

Hearing Date: May 24, 2018
Hearing Time: 10:00 a.m.

29 PATRICK CANET,
30 Cross-Claimant,

31 v.
32 JED MARGOLIN,
33 Cross-Defendant.

1 In accordance with F.R.Bankr.P. 7056, Cross Claimant Patrick Canet opposes the
2 Motion For Summary Judgment (“MSJ”), filed by Cross Defendant Jed Margolin
3 (“Margolin”), **DE 23**, and files his Counter Motion For Summary Judgment. This
4 Opposition and Counter Motion is accompanied by separately filed Statement of Undisputed
5 Facts and Disputed Facts.

6
7 **SUMMARY**

8 The primary issue in this proceeding is whether the recordation of a default judgment
9 in several counties, and the follow-on execution process was valid. Canet contends that
10 Margolin failed to comply with certain of the statutory requirements in the default judgment
11 and execution process, with the result that both are fatally flawed, leaving Margolin as an
12 unsecured creditor. Because the issues are fundamentally the same, Canet’s Opposition also
13 demonstrates the basis for his Counter Motion.

14
15 **SUMMARY JUDGMENT STANDARD**

16 Under F.R.Civ.P. 56 (made applicable by F.R.Bankr.P. 7056), the standard for
17 granting summary judgment is “that there is no genuine dispute as to any material fact and
18 that the moving party is entitled to judgment as a matter of law.” F.R.Civ.P. 56. 10-7056
19 *Collier on Bankruptcy* P 7056.03 (16th ed.). As stated by the United States Supreme Court,
20 “at the summary judgment stage the judge’s function is not himself to weight the evidence
21 and determine the truth of the matter but to determine whether there is a genuine issue for
22 trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed.
23 2d 202, 212 (1986). Therefore, under the Supreme Court’s standard, the court cannot grant
24 summary judgment if there is a genuinely disputed issue of material fact.

25 “The proponent of a summary judgment motion bears a heavy burden to show that
26 there are no disputed facts warranting disposition of the case on the law without trial.”
27 *Younie v. Gonya (In re Younie)*, 211 B.R. 367, 373 (9th Cir. BAP 1997) (*quoting Grzybowski*
28 *v. Aquaslide “N” Dive Corp. (In re Aquaslide “N” Dive Corp.)*, 85 B.R. 545, 547 (9th Cir.

1 BAP 1987)); *In re Jarvar*, 422 B.R. 242 (Bankr. D. Mont. 2009). “The manner in which
2 this burden is proven depends on which party has the burden on a particular claim or
3 defense at the time of trial.”

4 If the moving party will bear the burden of persuasion at trial, that party must
5 support its motion with credible evidence-using any of the materials specified
6 in Rule 56(c)-that would entitle it to a directed verdict if not controverted at
7 trial. Such an affirmative showing shifts the burden of production to the
8 party opposing the motion and requires that party either to produce
9 evidentiary materials that demonstrate the existence of a “genuine issue” for
10 trial to or submit an affidavit requesting additional time for discovery. If the
11 burden of persuasion at trial would be on the non-moving party, the party
12 moving for summary judgment may satisfy Rule 56’s burden of production in
13 either of two ways. First, the moving party may submit affirmative evidence
14 that negates an essential element of the nonmoving party’s claim. Second,
15 the moving party may demonstrate to the Court that the non-moving party’s
16 evidence is insufficient to establish an essential element of the nonmoving
17 party’s claim.

18 *In re Jarvar*, 422 B.R. at 246, quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 330-34, 106
19 S. Ct. 2548, 2557, 91 L.Ed. 2d 265 (1986)(Brennan dissent)(citations omitted). *See also*,
20 *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102-06 (9th
21 Cir. 2000) (discussing burdens for withstanding summary judgment).

22 Canet disputes Margolin’s contention that he is entitled to summary judgment. And,
23 as set forth herein, Canet contends that Margolin has failed to establish compliance with the
24 statutory requirements for execution on a judgment and that Canet is entitled to summary
25 judgment as a matter of law. If Canet is correct, then he is entitled to summary judgment in
26 his favor.

27 Margolin filed two Declarations in support of his MSJ, the McMillen Declaration,
28 **DE 25** and the Francis Declaration, **DE 26**. The McMillen Declaration references five
Exhibits consisting of five Sheriff’s Certificates of Sale, one for Clark County and four for
Washoe County. The Francis Declaration references seven Exhibits. Exhibit A includes the
Default Judgment upon which the underlying Margolin claim is based. Exhibit A also
includes subparts, i.e., copies of the Default Judgment evidencing recordation in Washoe
County, Clark County, Lyon County, Churchill County, and Elko County. Exhibit B is a
copy of the Order Re: Writ of Execution issued by Judge Russell in August 2014. The

1 remainder of the Exhibits attached to the Francis Declaration are copies of discovery
2 propounded to Canet and several e-mails exchanged between Margolin’s counsel and
3 Canet’s counsel and will be addressed below.

4 LR 7056(a) provides:

5 a) Motions. Each motion for summary judgment must be accompanied by a
6 separately filed “Statement of Undisputed Facts” which must specify each of the
7 material facts relied upon in support of the motion, and which cites to the particular
8 portions of any pleading, affidavit, declaration, deposition, interrogatory answer,
admission or other document relied upon to establish that fact. The moving party
must file as an exhibit to the statement all of the evidentiary documents that are cited
in the moving papers.

9 Based upon the requirement of Rule 7056(a), Canet asserts that the papers attached
10 to the McMillen Declaration and the Francis Declaration do not support the relief requested
11 by Margolin. In fact, the absence of significant documentation from Margolin requires a
12 conclusion that, as a matter of law, the Sheriff’s Deeds recorded by Margolin must be
13 declared void *ab initio*.

14
15 **ANALYSIS**

16 **The Execution Efforts By Margolin Failed To Strictly Comply With Statutory**
17 **Requirements**

18 On August 16, 2013, Margolin recorded his June 24, 2013 Default Judgment in
19 Washoe County against Zandian as document no. 4269631 (“Default Judgment”). The
20 Default Judgment was recorded in Clark County four days later on August 20, 2013 as
21 document no. 201308200001370. The McMillen Declaration, **DE 25**, references the
22 following documents:

23 **Exhibit A** is a Clark County Sheriff’s Certificate of Sale Of Real Property
24 filed with the First Judicial District Court in Carson City in case no.
090C00579 1B on January 8, 2015 affecting APN 071-02-000-005;¹

25 **Exhibit B** is a Certificate of Sale recorded in Washoe County on April 9,
26 2015 as document no. 4456021 affecting APN 084-130-07;

27
28 ¹ Canet will seek leave under F.R.Civ.P. 15 and F.R.Bankr.P. 15 to amend his Cross
Claims against Margolin to also include reference to separate APN 071-02-000-013 located in
Clark County, Nevada.

1 **Exhibit C** is a Certificate of Sale recorded in Washoe County on April 9,
2015 as document no. 4456020 affecting APN 079-15-10;

2 **Exhibit D** is a Certificate of Sale recorded in Washoe County on April 9,
3 2015 as document no. 4456032 affecting APN 084-040-02, and

4 **Exhibit E** is a Certificate of Sale recorded in Washoe County on April 9,
5 2015 as document no. 4456017 affecting APN 079-150-12.

6 Canet asserts that these documents fail to evidence compliance with applicable
7 statutory requirements and, as such, do not support the MSJ.

8
9 **A. NRS 17.150.**

10 NRS 17.150. Docketing of judgments of state and federal courts; recording of
11 transcripts, abstracts and copies of judgments; liens on real property;
12 duration of liens; **affidavit required of judgment creditor who
records judgment or decree.**

13 1. Immediately after filing a judgment roll, the clerk shall make the proper entries of
14 the judgment, under appropriate heads, in the docket kept by the clerk, noting
thereon the hour and minutes of the day of such entries.

15 2. A transcript of the original docket or an abstract or copy of any judgment or
16 decree of a district court of the State of Nevada or the District Court or other court of
17 the United States in and for the District of Nevada, the enforcement of which has not
18 been stayed on appeal, certified by the clerk of the court where the judgment or
19 decree was rendered, may be recorded in the office of the county recorder in any
20 county, and when so recorded it becomes a lien upon all the real property of the
judgment debtor not exempt from execution in that county, owned by the judgment
debtor at the time, or which the judgment debtor may afterward acquire, until the lien
expires. The lien continues for 6 years after the date the judgment or decree was
docketed, and is continued each time the judgment or decree is renewed, unless:

21 (a) The enforcement of the judgment or decree is stayed on appeal by the
22 execution of a sufficient undertaking as provided in the Nevada Rules of
23 Appellate Procedure or by the Statutes of the United States, in which case the
lien of the judgment or decree and any lien by virtue of an attachment that
has been issued and levied in the actions ceases;

24 (b) The judgment is for arrearages in the payment of child support, in which
25 case the lien continues until the judgment is satisfied;

26 (c) The judgment is satisfied; or

27 (d) The lien is otherwise discharged.

28 The time during which the execution of the judgment is suspended by appeal, action

1 of the court or defendant must not be counted in computing the time of expiration.

2 3. The abstract described in subsection 2 must contain the:

3 (a) Title of the court and the title and number of the action;

4 (b) Date of entry of the judgment or decree;

5 (c) Names of the judgment debtor and judgment creditor;

6 (d) Amount of the judgment or decree; and

7 (e) Location where the judgment or decree is entered in the minutes or
8 judgment docket.

9 Subparagraph 17.150(4), which mandates that the judgment creditor record an affidavit,
10 provides, in pertinent part:

11 **In addition to recording the information described in subsection 2, a judgment
12 creditor who records a judgment or decree for the purpose of creating a lien
13 upon the real property of the judgment debtor pursuant to subsection 2 shall
14 record at that time an affidavit of judgment stating:**

14 (a) The name and address of the judgment debtor;

15 (b) If the judgment debtor is a natural person:

16 (1) The last four digits of the judgment debtor's driver's license
17 number or identification card number and the state of issuance; or

18 (2) The last four digits of the judgment debtor's social security
19 number;

20 (c) If the lien is against real property which the judgment debtor owns at the
21 time the affidavit of judgment is recorded, the assessor's parcel number and
22 the address of the real property and a statement that the judgment creditor has
23 confirmed that the judgment debtor is the legal owner of that real property;
24 and

25 All information included in an affidavit of judgment recorded pursuant to this
26 subsection must be based on the personal knowledge of the affiant, and not upon
27 information and belief.

28 (Emphasis added).

25 There is no form of affidavit attached to the McMillen Declaration or the Francis
26 Declaration, demonstrating compliance with subpart (4). It is apparent that Margolin did not
27 record an affidavit with the county recorders complying with any of the requirements of
28 NRS 17.150(4) (a), (b) or (c). It was not enough for Margolin to record the Default

1 Judgment in various counties in 2013; the statute mandates a separate recording, i.e., an
2 affidavit containing the information delineated in subpart (4). No such affidavit was
3 recorded.

4 Canet asserts that failure to comply with NRS 17.150(4) (a), (b) or (c) renders void
5 the recording of the Default Judgment in every county, i.e., Washoe County, Clark County,
6 Lyon County, Churchill County, and Elko County.

7
8 **B. NRS 21.130.**

9 NRS 21.130. Notice of sale under execution; separate notice for residential
10 foreclosure.²

11 Subparagraphs (c)(1), (2), (3) and (4) of paragraph 1, relevant here, provide:

12 Before the sale of property on execution, notice of the sale, in addition to the notice
13 required pursuant to NRS 21.075 and 21.076, must be given as follows:

14 (1) Personal service upon each judgment debtor or by registered mail to the last
15 known address of each judgment debtor and, if the property of the judgment debtor
16 is operated as a facility licensed under chapter 449 of NRS, upon the State Board of
Health;

17 (2) Posting a similar notice particularly describing the property, for 20 days
18 successively, in three public places of the township or city where the property is
situated and where the property is to be sold;

19 (3) Publishing a copy of the notice three times, once each week, for 3 successive
20 weeks, in a newspaper, if there is one in the county. The cost of publication must not
21 exceed the rate for legal advertising as provided in NRS 238.070. If the newspaper
22 authorized by this section to publish the notice of sale neglects or refuses from any
23 cause to make the publication, then the posting of notices as provided in this section
shall be deemed sufficient notice. Notice of the sale of property on execution upon a
judgment for any sum less than \$500, exclusive of costs, must be given only by
posting in three public places in the county, one of which must be the courthouse;

24 (4) Recording a copy of the notice in the office of the county recorder, and

25 NRS 21.130, paragraph 4 provides:

26 The sheriff shall not conduct a sale of the property on execution or deliver the
27 judgment debtor's property to the judgment creditor if the judgment debtor or any

28

 ² A copy of NRS 21.130 is attached as **Appendix A.**

1 other person entitled to notice has not been properly notified as required in this
2 section and NRS 21.075 and 21.076.

3 The Certificates of Sale, recorded in early 2015, are attached to the McMillen Declaration as
4 Exhibits A through E. NRS 21.130 requires that **before** a sale of property on execution,
5 four conjunctive requirements must be satisfied. There is no evidence included in either the
6 McMillen Declaration or the Francis Declaration demonstrating that the four requirements
7 of NRS 21.130(1) through (4), related to notice, were satisfied.

8 These provisions go directly to the question of notice.

9
10 **C. NRS 21.075**

11 NRS 21.075. Notice of writ of execution: Service required; form; contents.³

12 1. Execution on the writ of execution by levying on the property of the judgment
13 debtor may occur only if the sheriff serves the judgment debtor with a notice of the
14 writ of execution pursuant to NRS 21.076 and a copy of the writ. The notice must
15 describe the types of property exempt from execution and explain the procedure for
16 claiming those exemptions in the manner required in subsection 2. The clerk of the
17 court shall attach the notice to the writ of execution at the time the writ is issued.

18 2. The notice required pursuant to subsection 1 must be substantially in the
19 following form: **See, Appendix B.**

20
21 There is no evidence in either the McMillen Declaration or the Francis Declaration that
22 notice of the writ, together with a copy of the writ, which required compliance with subpart
23 2, was served on the judgment debtor by the sheriff.

24
25 **D. NRS 21.076**

26 NRS 21.076 Notice of writ of execution: Manner and time of service.

27 The notice required by NRS 21.075 must be served by the sheriff on the judgment
28 debtor by regular mail at the debtor's last known address or, if the debtor is
represented by an attorney, at the attorney's office. The service must be mailed by
the next business day after the day the writ of execution was served.

There is no evidence in either the McMillen Declaration or the Francis Declaration that

³ A copy of NRS 21.075 is attached as **Appendix B.**

1 notice of the writ, together with a copy of the writ, which included compliance with subpart
2 2, was served on the judgment debtor by the sheriff.

3 This provision goes directly to the question of notice.

4
5 **E. NRS 21.200 Real property sold subject to redemption; who may redeem;
6 redemptioner defined.**

7 NRS 21.200 provides:

8 1. Property sold subject to redemption, as provided in NRS 21.190, or any part sold
9 separately, may be redeemed in the manner hereinafter provided by the following
10 persons or their successors in interest:

11 (a) The judgment debtor or the judgment debtor’s successor in interest, in
12 the whole or any part of the property.

13 (b) A creditor having a lien by judgment or mortgage on the property sold, or
14 on some share or part thereof, subsequent to that on which the property was
15 sold.

16 2. The person mentioned in paragraph (b) of subsection 1 is termed a
17 “redemptioner” in this chapter.

18 In this case, the Sheriff’s Certificates of Sale of Property each included a provision
19 which states: “If the sale was of real property, said sale is subject to redemption as provided
20 in NRS Chapter 21. Canet asserts that failure by Margolin to strictly comply with the
21 execution statutes failed to trigger the redemption period and improperly cut off rights of
22 redemption which would otherwise inure to the benefit of Canet. See, *In re Bialac*, 712 F.2d
23 426 (9th Cir. 1983).

24 This provision goes directly to the question of notice.

25 **APPLICABLE CASE LAW**

26 **Failure To Strictly Comply With Statutory Requirements Means That The Execution
27 Sale Process Is Void**

28 The Nevada statutory scheme sets forth clear and specific requirements for
conducting execution sales. In the recent case of *Pawlik v. Shyang-Fenn Deng*, 2018 Nev.
LEXIS 15, 134 Nev. Adv. Rep. 11 (Nev. March 1, 2018), the Supreme Court was called

1 upon to resolve a dispute regarding redemption rights under a Nevada tax sale statute, NRS
 2 271.595. Pawlik purchased property at a duly noticed tax sale on January 27, 2014. On
 3 January 7, 2016, just short of the expiration of the 2 year redemption period (January 26,
 4 2016), Pawlik gave notice to the Dings that he intended to apply for a tax deed. Sixty-seven
 5 (67) days later, Pawlik applied for issuance of his deed. Pawlik argued that he had
 6 substantially complied with the statute but the Court concluded that the statute in question
 7 required strict compliance and that he had prematurely requested issuance of the deed.

8 As we have explained, “[a] [statute] may contain both mandatory and directory
 9 provisions.” *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664, 310 P.3d
 10 569, 571 (2013) (citing *Leven*, 123 Nev. at 408 n.31, 168 P.3d at 718 n.31; see also
 11 *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 696, 290 P.3d 249, 254
 12 (2012)). **A statute’s provisions are mandatory “when its language states a
 13 specific time and manner for performance.”** Id. at 664, 310 P.3d at 572 (internal
 14 quotation omitted). “Time and manner refers to when performance must take place
 and the way in which the deadline must be met.” Id. In contrast, directory provisions
 are those governing “form and content,” which “dictate who must take action and
 what information that party is required to provide” and “do not implicate notice.” Id.
 at 664-65, 310 P.3d at 572 (internal quotations omitted). An additional consideration
 is that “the right to redeem . . . will not be taken away except upon strict compliance
 with steps necessary to divest it.” *Robinson*, 83 Nev. at 355, 432 P.2d at 86.

15 *Pawlik*, 2018 Nev. LEXIS at 12-13.⁴ Emphasis added.

16 Canet contends that NRS 17.150(4) is mandatory in that it states the judgment
 17 creditor “shall” record an affidavit with specified information. Canet contends that all
 18 requirements of the statute are mandatory; none are optional. It is undisputed that Margolin
 19 did not record the affidavit required by NRS 17.150 (4) which begins:

20 “in addition to recording the information described in subsection 2, a judgment
 21 creditor who records a judgment or decree for the purpose of creating a lien upon the
 22 real property of the judgment debtor pursuant to subsection 2 shall record at that
 time an affidavit of judgment stating

23 NRS 17.150 (2) goes directly to the time of the event, i.e., the recordation of the judgment.

24 With respect to the affidavit, NRS 17.150 (4) states **shall record at that time an affidavit
 25 of judgment stating:**

26
 27
 28 ⁴ The Supreme Court reached the same conclusion in *Leven v. Frey*, 123 Nev. 399
 (2007).

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- (a) The name and address of the judgment debtor;
- (b) If the judgment debtor is a natural person:
 - (1) The last four digits of the judgment debtor’s driver’s license number or identification card number and the state of issuance; or
 - (2) The last four digits of the judgment debtor’s social security number;
- (c) If the lien is against real property which the judgment debtor owns at the time the affidavit of judgment is recorded, the assessor’s parcel number and the address of the real property and a statement that the judgment creditor has confirmed that the judgment debtor is the legal owner of that real property; and

All information included in an affidavit of judgment recorded pursuant to this subsection must be based on the personal knowledge of the affiant, and not upon information and belief.

Statutory provisions should, whenever possible, be read in harmony provided that doing so does not violate the ascertained spirit and intent of the legislature. *Pawlik* at page 21. Here, the legislature was very specific in setting forth the requirements for recording a judgment. Margolin cannot contend that the affidavit requirement is optional.

CONCLUSION ON SUMMARY JUDGMENT

Canet asserts that the MSJ is not supported by admissible evidence which demonstrates compliance with all of the required statutory provisions for an execution sale. To the contrary, Canet asserts that Margolin’s failure to comply with the strict legislative requirements of NRS 17.150 renders void the recording of the initial default judgment. In addition, substantially all of the subsequent actions appear to have procedural or noticing flaws which render the entire execution process invalid.

Accordingly, Canet requests the Court enter summary judgment in his favor determining that the entire process from the recording of the Default Judgment in Washoe County, Clark County, Lyon County, Churchill County, and Elko County is void as are the subsequent Sheriffs’ certificates of sale and the Sheriffs’ deeds which followed.

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MARGOLIN’S REQUESTS FOR SANCTIONS

1. To the extent that the Motion includes a request for sanctions, it was not properly noticed.

2. Margolin elected to not file a motion to compel compliance with discovery.

3. As the Court is aware, Mr. Canet resides in Paris, France where he is overseeing the collection and liquidation of Reza Zandian’s assets. Mr. Canet has no documentation related to Zandian’s activities in Nevada. And, in fact, the documents related to the instant Motion For Summary Judgment and the Counter Motion For Summary Judgment are all in the hands of Margolin.

4. Hartman acknowledges that he did not respond to the First Set of Interrogatories and the Request For Production of Documents propounded by Margolin. A simple review demonstrates that of the 21 Interrogatories propounded, all but five are wholly irrelevant to the pending adversary proceeding. The five remaining interrogatories each request identity of documents supporting Canet’s two Cross-Claims. As is apparent from Canet’s Counter Motion, his position relies upon the absence of critical documents regarding compliance with the default judgment and execution process.

DATED: April 11, 2018.

HARTMAN & HARTMAN

/S/ Jeffrey L. Hartman
Jeffrey L. Hartman, Esq.
Attorney for Patrick Canet,
Foreign Representative

CERTIFICATE OF SERVICE

I certify that I am an employee of Hartman & Hartman, and that on April 11, 2018, I caused to be served the foregoing document by the following means to the persons as listed below:

✓ a. Electronically, via the Court's ECF System, to

MATTHEW D. FRANCIS on behalf of Cross Defendant JED MARGOLIN
mfrancis@bhfs.com; nlindsley@bhfs.com, rnofederal@bhfs.com

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ARTHUR A. ZORIO on behalf of Cross Defendant JED MARGOLIN
azorio@bhfs.com, RenoIDFilings@bhfs.com

ARTHUR A. ZORIO on behalf of Defendant JED MARGOLIN
azorio@bhfs.com, RenoIDFilings@bhfs.com

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 11, 2018.

/S/ Stephanie Ittner
Stephanie Ittner

APPENDIX A

Nev. Rev. Stat. Ann. § 21.130

This document is current through Chapters 1-104, 106-176, 178, 179, 181-303, 305-317, 320-322, 324-341, 343-355, 357-362, 364, 366-420, 423, 425-445, 447-478, 480, 484-485, 487-505, 506, 508, 510, 512-517, 519-522, 524-547, 549-555, 557-560, 562-565, 567, 569, 573, 576, 579-582, 584-586, 589, 590, 595, 596, 599-603, and 606-608 of the Seventy-Ninth Regular Session (2017).

Nevada Revised Statutes Annotated > Title 2. Civil Practice. > Chapter 21. Enforcement of Judgments. > Executions and Exemptions

21.130. Notice of sale under execution; separate notice for residential foreclosure.

1. Before the sale of property on execution, notice of the sale, in addition to the notice required pursuant to NRS 21.075 and 21.076, must be given as follows:
 - (a) In cases of perishable property, by posting written notice of the time and place of sale in three public places at the township or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property.
 - (b) In case of other personal property, by posting a similar notice in three public places of the township or city where the sale is to take place, not less than 5 or more than 10 days before the sale, and, in case of sale on execution issuing out of a district court, by the publication of a copy of the notice in a newspaper, if there is one in the county, at least twice, the first publication being not less than 10 days before the date of the sale.
 - (c) In case of real property, by:
 - (1) Personal service upon each judgment debtor or by registered mail to the last known address of each judgment debtor and, if the property of the judgment debtor is operated as a facility licensed under chapter 449 of NRS, upon the State Board of Health;
 - (2) Posting a similar notice particularly describing the property, for 20 days successively, in three public places of the township or city where the property is situated and where the property is to be sold;
 - (3) Publishing a copy of the notice three times, once each week, for 3 successive weeks, in a newspaper, if there is one in the county. The cost of publication must not exceed the rate for legal advertising as provided in NRS 238.070. If the newspaper authorized by this section to publish the notice of sale neglects or refuses from any cause to make the publication, then the posting of notices as provided in this section shall be deemed sufficient notice. Notice of the sale of property on execution upon a judgment for any sum less than \$500, exclusive of costs, must be given only by posting in three public places in the county, one of which must be the courthouse;
 - (4) Recording a copy of the notice in the office of the county recorder; and
 - (5) If the sale of property is a residential foreclosure, posting a copy of the notice in a conspicuous place on the property. In addition to the requirements of NRS 21.140, the

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notice must not be defaced or removed until the transfer of title is recorded or the property becomes occupied after completion of the sale, whichever is earlier.

2. If the sale of property is a residential foreclosure, the notice must include, without limitation:
 - (a) The physical address of the property; and
 - (b) The contact information of the party who is authorized to provide information relating to the foreclosure status of the property.
3. If the sale of property is a residential foreclosure, a separate notice must be posted in a conspicuous place on the property and mailed, with a certificate of mailing issued by the United States Postal Service or another mail delivery service, to any tenant or subtenant, if any, other than the judgment debtor, in actual occupation of the premises not later than 3 business days after the notice of the sale is given pursuant to subsection 1. The separate notice must be in substantially the following form:
 4. The sheriff shall not conduct a sale of the property on execution or deliver the judgment debtor's property to the judgment creditor if the judgment debtor or any other person entitled to notice has not been properly notified as required in this section and NRS 21.075 and 21.076.
 5. As used in this section, "residential foreclosure" means the sale of a single family residence pursuant to NRS 40.430. As used in this subsection, "single family residence" means a structure that is comprised of not more than four units.

History

CPA 1911, § 348; 1951, p. 153; 1965, p. 612; 1975, p. 651; 1989, ch. 539, § 7, p. 1138; 2009, ch. 484, § 2, p. 2781; 2015, ch. 507, § 31, p. 3128.

Annotations

Notes

Amendment Notes

The 2009 amendment, effective October 1, 2009, added "and, if the property of the judgment debtor is operated as a facility licensed under chapter 449 of NRS, upon the State Board of Health" in (1)(c)(1); added (1)(c)(4), (1)(c)(5), (2) and (3); redesignated former (2) as (4); added (5); and made a related and a stylistic change.

The 2015 amendment, effective October 1, 2015, substituted "surrender" for "quit" in the fifth paragraph of the Notice to Tenants of the Property of (3); and in the eighth paragraph of the Notice to Tenants of the Property of (3), added "unless service is accomplished by a sheriff, constable or licensed process server, in which case the presence of a witness is not required" in (1), added "and to the place where the leased property is situated, if different" in (2), and in (3), deleted "delivering a copy to a person residing there, if a person can be found" following "leased property" and added "situated."

APPENDIX B

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This document is current through Chapters 1-104, 106-176, 178, 179, 181-303, 305-317, 320-322, 324-341, 343-355, 357-362, 364, 366-420, 423, 425-445, 447-478, 480, 484-485, 487-505, 506, 508, 510, 512-517, 519-522, 524-547, 549-555, 557-560, 562-565, 567, 569, 573, 576, 579-582, 584-586, 589, 590, 595, 596, 599-603, and 606-608 of the Seventy-Ninth Regular Session (2017).

Nevada Revised Statutes Annotated > Title 2. Civil Practice. > Chapter 21. Enforcement of Judgments. > Executions and Exemptions

21.075. Notice of writ of execution: Service required; form; contents.

1. Execution on the writ of execution by levying on the property of the judgment debtor may occur only if the sheriff serves the judgment debtor with a notice of the writ of execution pursuant to NRS 21.076 and a copy of the writ. The notice must describe the types of property exempt from execution and explain the procedure for claiming those exemptions in the manner required in subsection 2. The clerk of the court shall attach the notice to the writ of execution at the time the writ is issued.
2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED

A court has determined that you owe money to (name of person), the judgment creditor. The judgment creditor has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.
4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.

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9. A homestead in a dwelling or a mobile home, not to exceed \$550,000, unless:
 - (a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.
 - (b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.
10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.
11. A vehicle, if your equity in the vehicle is less than \$15,000.
12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage was \$770 or less on the date the most recent writ of garnishment was issued, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage exceeded \$770 on the date the most recent writ of garnishment was issued, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.
13. Money, not to exceed \$500,000 in present value, held in:
 - (a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;
 - (b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;
 - (c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;
 - (d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and
 - (e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.
14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.
15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.
16. Regardless of whether a trust contains a spendthrift provision:
 - (a) A present or future interest in the income or principal of a trust that is a contingent interest, if the contingency has not been satisfied or removed;

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(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

17. If a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

23. Payments received as restitution for a criminal act.

24. Personal property, not to exceed \$1,000 in total value, if the property is not otherwise exempt from execution.

25. A tax refund received from the earned income credit provided by federal law or a similar state law.

26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through (name of organization in county providing legal services to indigent or elderly persons). If you do not wish to consult an attorney or receive legal services from an

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organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption from the clerk of the court.

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim of exemption and notice for the hearing is filed. You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

History

1989, ch. 539, § 2, p. 1135; 1991, ch. 311, § 1, p. 811; 1991, ch. 488, § 1, p. 1412; 1995, ch. 153, § 4, p. 227; 1995, ch. 431, § 2, p. 1071; 1997, ch. 123, § 1, p. 265; 1997, ch. 685, § 7, p. 3412; 2003, ch. 201, § 3, p. 1010; 2003, ch. 324, § 1, p. 1812; 2005, ch. 121, § 2, p. 382; 2005, ch. 290, § 4, p. 1012; 2005, ch. 464, § 4, p. 2228; 2007, ch. 480, § 171.2, p. 2708; 2007, ch. 512, § 1, p. 3016; 2009, ch. 215, § 61, p. 803; 2011, ch. 270, § 1, p. 1406; 2011, ch. 338, § 6, p. 1892; 2017, ch. 329, § 3.

Annotations

Notes

Editor's Notes