

## **IC 34-55-6**

### **Chapter 6. Sale of Property on Execution**

#### **IC 34-55-6-1**

##### **Real estate; rents and profits to be first offered for sale**

Sec. 1. The estate or interest of the judgment debtor in any real estate shall not be sold on execution until the rents and profits of the real estate has been first offered for sale at public auction for a period not exceeding seven (7) years. However, if the real estate does not sell for a sum sufficient to satisfy the execution, the estate or interest of the judgment debtor shall be sold by virtue of the execution.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-2**

##### **Manner of sale**

Sec. 2. A sheriff shall sell property on execution in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-3**

##### **Auctions**

Sec. 3. Upon prior petition of the debtor or any creditor involved in the execution proceedings, the court in its order of execution shall order the property sold by the sheriff through the services of an auctioneer if the court determines that:

- (1) a sale is economically feasible; or
- (2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-4**

##### **Auctioneer's conduct; advertising**

Sec. 4. An auctioneer engaged by a sheriff under this chapter shall conduct the auctioneer's activities as appropriate to bring the highest bid for the property on execution. The advertising conducted by the auctioneer is in addition to any other notice required by law.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-5**

##### **Auctioneer's fee and expenses**

Sec. 5. (a) The auctioneer's fee shall be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount set out in section 3 of this chapter, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars (\$100).

(b) The amount due the auctioneer for the auctioneer's expenses and fee, if any, shall be paid as a cost of the sale from the sale

proceeds before the payment of any other payment from the sale proceeds.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-6**

##### **Rents and profits; sale and appraisal**

Sec. 6. Rents and profits may be sold as other property, the appraisers setting down the value of each year separately.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-7**

##### **Rents and profits; maximum term of lease**

Sec. 7. If rents and profits are sold under section 6 of this chapter (or IC 34-1-39-2 before its repeal), only the number of years of rents and profits not exceeding seven (7) years shall be sold as will satisfy the execution, and no more. The sheriff shall execute a lease to the purchaser for the term sold.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-8**

##### **Real estate; sale at public auction**

Sec. 8. (a) Real estate, including chattels real, taken by virtue of an execution, shall be sold at public auction at:

- (1) the courthouse of the county in which the real estate is located; or
- (2) another location that is reasonably likely to draw higher bids for the real property.

(b) If the estate consists of several lots, tracts, and parcels, each lot, tract, or parcel shall be offered for sale separately. No more of any real estate shall be offered for sale than is necessary to satisfy the execution, unless the real estate is not susceptible of division.

(c) When real estate which is not susceptible of division is ordered to be sold on any decree or judgment, and the real estate is traversed by the line between two (2) counties, the real estate may be advertised and sold in either county.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-9**

##### **Real estate; notice requirements for sale**

Sec. 9. (a) A sale of real estate, on execution, shall be advertised by the sheriff for at least twenty (20) days successively, next before the day of sale, by:

- (1) posting written or printed notices of the sale in three (3) public places in the township in which the real estate is located;
- (2) posting a like advertisement at the door of the courthouse of the county; and
- (3) advertising the sale for three (3) weeks successively in a newspaper:
  - (A) of general circulation;
  - (B) printed in the English language; and

(C) published in the county where the real estate is located.

(b) However, if the sheriff is not able to procure the publication of the notice in a newspaper of general circulation, published within the sheriff's county, the sheriff may dispense with the publication of the notice. The land may be sold without the required publication, but the sheriff shall, in the sheriff's return of the writ, state the sheriff's inability to procure the publication. The return has the same effect in evidence as the official returns of sheriffs in other cases.

(c) In a notice under this section, the sheriff must include the following:

- (1) A statement of the date, time, and place of the sale.
- (2) A description of the location of the property that includes, for informational purposes only, the location of each property by street address, if any, or other common description of the property other than legal description. However, a misstatement in the informational statement under this subdivision does not invalidate an otherwise valid sale.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-10**

##### **Personal property; notice requirements for sale**

Sec. 10. Previous notice of the time and place of the sale of any personal property on execution shall be given for ten (10) days successively by posting written notices of the sale in at least three (3) of the most public places in the township where the sale is to be made.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-11**

##### **Personal property; sale at public auction**

Sec. 11. (a) Personal property shall not be sold unless the personal property is present and subject to the view of those persons attending the sale.

(b) Personal property shall be sold at public auction, in such lots and parcels as calculated to bring the highest price.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-12**

##### **Insufficient levy; further levy and sale**

Sec. 12. If the property levied on does not sell for a sum sufficient to satisfy the execution, the sheriff shall:

- (1) make a further and sufficient levy, if sufficient property can be found;
- (2) proceed as upon the first levy; and
- (3) return the sheriff's actions on the further levy.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-13**

##### **Unsatisfied execution; issuance of new execution**

Sec. 13. The clerk, upon the return of an execution unsatisfied,

shall issue another execution upon the judgment, and endorse on the execution the amount of money, if any, levied by the former execution.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-14**

##### **Real estate; sheriff's deed**

Sec. 14. (a) Upon the sale of real estate, by virtue of an execution, and the payment of the purchase money, the sheriff making the sale (or in case of the sheriff's death or going out of office, the sheriff's successor) or any officer authorized to discharge the duties of the office shall execute and deliver to the purchaser a deed of conveyance for the premises.

(b) A deed of conveyance delivered under subsection (a) is valid and effectual to convey all the right, title, and interest of the execution debtor to the purchaser, except any right of redemption, as provided by law.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-15**

##### **Real estate; conveyance of land to heirs or devisees of deceased purchaser**

Sec. 15. If the purchaser of real estate upon execution, who has paid the purchase money for the real estate, dies before a deed of conveyance is executed to the purchaser, the sheriff shall convey the real estate to the heirs or devisees of the deceased person.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-16**

##### **Procedural violations by sheriff; penalties**

Sec. 16. (a) A sheriff who:

- (1) sells any real estate without giving the previous notice required by this chapter (or IC 34-1-39 before its repeal); or
- (2) sells the real estate otherwise than in the manner prescribed by this chapter;

shall forfeit and pay to the injured party not less than ten dollars (\$10) nor more than two hundred dollars (\$200) in addition to other damages the party may have sustained.

(b) Damages under subsection (a) may be recovered from the sheriff or from the sheriff and the sheriff's sureties in an action on the sheriff's official bond.

*As added by P.L.1-1998, SEC.51.*

#### **IC 34-55-6-17**

##### **Purchase of property by sheriff or deputies; sale void**

Sec. 17. If a sheriff or the sheriff's agent making sale of property on execution directly or indirectly purchases the property, the sale is void.

*As added by P.L.1-1998, SEC.51.*

### **IC 34-55-6-18**

#### **Failure of purchaser to pay for property; damages**

Sec. 18. Whenever the purchaser of property sold on execution fails or refuses to pay the purchase money, the purchaser is liable, on motion made by the sheriff or the execution plaintiff or defendant in the proper court on five (5) days notice, to a judgment for the amount of:

- (1) the purchase money;
- (2) damages not exceeding ten percent (10%);
- (3) interest; and
- (4) costs.

No stay of execution shall be allowed upon the judgment.

*As added by P.L.1-1998, SEC.51.*

### **IC 34-55-6-19**

#### **Failure of purchaser to pay for property; resale of property; damages**

Sec. 19. (a) As an alternative to the procedure set forth in section 18 of this chapter, the sheriff may reexpose and sell the property on the same or any subsequent day according to law. If the amount bid at the second sale does not equal the amount bid at the first sale and the costs of the second sale, the first purchaser is liable for:

- (1) the deficiency;
- (2) damages not exceeding ten percent (10%);
- (3) interest; and
- (4) costs;

to be recovered by a like notice and motion as provided in section 18 of this chapter.

(b) If the sheriff sells on a subsequent day, the sheriff shall readvertise as in other cases.

*As added by P.L.1-1998, SEC.51.*

### **IC 34-55-6-20**

#### **Limitation on use of mail**

Sec. 20. When an execution is issued to any county other than the county in which the judgment is rendered, return may be made by mail. However, money may not be sent by mail, except by the direction of the party entitled to the money or that party's attorney.

*As added by P.L.1-1998, SEC.51.*

### **IC 34-55-6-21**

#### **Surplus of execution sale; disposition**

Sec. 21. When property is sold on execution for more than will satisfy the execution, including interest and costs, the sheriff shall pay the overplus to the execution debtor on whom it was levied, or to the execution debtor's assigns, unless the execution debtor is notified of the existence of liens to the payment of which the overplus should be applied. In that event, the execution debtor shall return the money, which is to be disposed of as the court directs.

*As added by P.L.1-1998, SEC.51.*