

## CHAPTER 626

## EXECUTION

For Iowa court rules concerning execution and duty of officer,  
 endorsement, and levy on personalty,  
 see R.C.P. 1.1018 – 1.1020  
 See also reference in §639.23  
 Garnishment, chapter 642

|        |   |        |  |
|--------|---|--------|--|
| 626.1  | Enforcement of judgments and orders.  | 626.43 | Contest as to validity or amount.                                      |
| 626.2  | Within what time — to what counties.  | 626.44 | Nonresident — service — transfer of action.                            |
| 626.3  | Limitation on number.   | 626.45 | Receiver — decree — costs.   |
| 626.4  | Lost writ.  | 626.46 | Various security agreements — priority.                                |
| 626.5  | Expiration of lost writ — effect.   | 626.47 | Other remedies.  |
| 626.6  | Issuance on Sunday.   | 626.48 | Failure to make statement — effect.                                    |
| 626.7  | Issuance on demand.   |        |  |
| 626.8  | Record kept.  | 626.49 | Where secured party garnished.   |
| 626.9  | Entries in foreign county.  | 626.50 | Duty to levy — notice of ownership or exemption — notice to defendant. |
| 626.10 | Duplicate returns and record.   |        |  |
| 626.11 | Return from foreign county.   | 626.51 | Failure to give notice — effect.                                       |
| 626.12 | Form of execution.  | 626.52 | Right to release levy.   |
| 626.13 | Property in hands of others.  | 626.53 | Exemption from liability.  |
| 626.14 | Delivery of possession and money recovery.  | 626.54 | Indemnifying bond — sale and return.                                   |
| 626.15 | Performance of other acts.  |        |  |
| 626.16 | Receipt and return.   | 626.55 | Failure to give bond.  |
| 626.17 | Principal and surety — order of liability.  | 626.56 | Application of proceeds.   |
| 626.18 | Duty to point out property.   | 626.57 | Repealed by 72 Acts, ch 1124, §282.                                    |
| 626.19 | Surety subrogated.  |        |  |
| 626.20 | Entry on encumbrance book.  | 626.58 | Stay of execution — exceptions.  |
| 626.21 | Choses in action.   | 626.59 | Affidavit of surety.   |
| 626.22 | Levy on judgment.   | 626.60 | Stay waives appeal.  |
| 626.23 | Persons indebted may pay officer.   | 626.61 | Bond — approval — recording — effect.                                  |
| 626.24 | Levy against municipal corporation — tax.   | 626.62 | Execution recalled.  |
| 626.25 | Unsecured interest in hands of third persons.   | 626.63 | Property released.   |
| 626.26 | Garnishment.  | 626.64 | Execution against principal and sureties.                              |
| 626.27 | Expiration or return of execution.  | 626.65 | Objections by surety.  |
| 626.28 | Return of garnishment — action docketed.  | 626.66 | Stay terminated by surety.   |
| 626.29 | Distress warrant by director of revenue, director of inspections and appeals, or director of workforce development. | 626.67 | Other security given.  |
| 626.30 | Expiration or return of distress warrant.   | 626.68 | Lien not released.   |
| 626.31 | Return of garnishment — action docketed — distress action.  | 626.69 | Labor or wage claims preferred.  |
| 626.32 | Joint or partnership property.  | 626.70 | Exceptions.  |
| 626.33 | Lien — equitable proceeding — receiver.   | 626.71 | Statement of claim — allowance.  |
| 626.34 | Personal property subject to security interest — payment.   | 626.72 | Contest.   |
| 626.35 | Interest on secured debt.   | 626.73 | Priority.  |
| 626.36 | Failure to pay, deposit, or give security.  | 626.74 | Notice of sale.  |
| 626.37 | Creditor subrogated.  | 626.75 | Posting and publication — compensation.                                |
| 626.38 | Holder reinstated.  |        |  |
| 626.39 | Statement of amount due.  | 626.76 | Labor commissioner to represent.                                       |
| 626.40 | Indemnifying bond.  | 626.77 | Penalty for selling without notice.                                    |
| 626.41 | Sale — costs — surplus.   | 626.78 | Notice to defendant.   |
| 626.42 | Statement of indebtedness.  | 626.79 | Setting aside sale.  |
|        |   | 626.80 | Time and manner.   |
|        |   | 626.81 | Sale postponed.  |
|        |   | 626.82 | Overplus.  |
|        |   | 626.83 | Deficiency — additional execution.                                     |
|        |   |        | Plan of division of land.  |
|        |   | 626.84 | Failure of purchaser to pay — optional procedure.                      |
|        |   | 626.85 | Sales vacated for lack of lien.  |
|        |   | 626.86 | Money — things in action.  |
|        |   | 626.87 |  |

|        |  |         |                                     |
|--------|--|---------|-------------------------------------|
| 626.88 | Real estate of deceased judgment debtor.                   | 626.98  | Deed.                               |
| 626.89 | Notice.  | 626.99  | Constructive notice — recording.    |
| 626.90 | Service and return.  | 626.100 | Presumption.                        |
| 626.91 | Execution awarded.   | 626.101 | Damages for injury to property.     |
| 626.92 | Mutual judgments — setoff.                                 | 626.102 | Repealed by 72 Acts, ch 1124, §282. |
| 626.93 | Personal property and leasehold interests — appraisalment. | 626.103 | Death of holder of judgment.        |
| 626.94 | Property unsold — optional procedure.                      | 626.104 | Officer's duty.                     |
| 626.95 | Deed or certificate.                                       | 626.105 | Affidavit required.                 |
| 626.96 | Duplicate issued in case of loss.                          | 626.106 | Execution quashed.                  |
| 626.97 | Cancellation after eight years.                            | 626.107 | Death of part of defendants.        |
|        |  | 626.108 | Fee bill execution.                 |
|        |  | 626.109 | Public property — state.            |

### **626.1 Enforcement of judgments and orders.**

Judgments or orders requiring the payment of money, or the delivery of the possession of property, are to be enforced by execution. Obedience to those requiring the performance of any other act is to be coerced by attachment as for a contempt.

[C51, §1885; R60, §3247; C73, §3026; C97, §3954; C24, 27, 31, 35, 39, §11648; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.1]

Contempts, chapter 665; exceptions, §598.23

### **626.2 Within what time — to what counties.**

Executions may issue at any time before the judgment is barred by the statute of limitations; and upon those in the district and appellate courts, into any county which the party ordering may direct.

[C51, §1886, 1888; R60, §3246, 3248; C73, §3025, 3027; C97, §3955; S13, §3955; C24, 27, 31, 35, 39, §11649; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.2]

Limitations on judgments, chapter 615

### **626.3 Limitation on number.**

Only one execution shall be in existence at the same time.

[R60, §3246; C73, §3025; C97, §3955; S13, §3955; C24, 27, 31, 35, 39, §11650; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.3]

### **626.4 Lost writ.**

When the plaintiff in judgment shall file in any court in which a judgment has been entered an affidavit made by the plaintiff, the plaintiff's agent or attorney, or by the officer to whom the execution was issued, that an outstanding execution has been lost or destroyed, the clerk of such court may issue a duplicate execution as of the date of the lost execution, which shall have the same force and effect as the original execution, and any levy made under the execution so lost shall have the same force and effect under the duplicate execution as under the original.

[S13, §3955; C24, 27, 31, 35, 39, §11651; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.4]

### **626.5 Expiration of lost writ — effect.**

When the lost execution shall have expired by limitation and such affidavit is filed, an execution may issue as it might if such lost execution had been duly returned.

[S13, §3955; C24, 27, 31, 35, 39, §11652; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.5]

### **626.6 Issuance on Sunday.**

An execution may be issued and executed on Sunday, when an affidavit is filed by the plaintiff, or some person in the plaintiff's behalf, stating that the plaintiff or person believes the plaintiff or person will lose the plaintiff's judgment unless process issues on that day.

[R60, §3263; C73, §3028; C97, §3956; C24, 27, 31, 35, 39, §11653; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.6]

Analogous provisions, §639.5, 643.3, and 667.3

**626.7 Issuance on demand.**

Upon the rendition of judgment, execution may be at once issued by the clerk on the demand of the party entitled thereto.

[R60, §3265; C73, §3029; C97, §3957; C24, 27, 31, 35, 39, §11654; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.7]

**626.8 Record kept.**

The clerk shall enter on the judgment docket the date of its issuance and to what county and officer issued, the return of the officer, with the date thereof; the dates and amount of all moneys received or paid out of the office thereon; which entries shall be made at the time each act is done.

[R60, §3265; C73, §3029; C97, §3957; C24, 27, 31, 35, 39, §11655; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.8]

**626.9 Entries in foreign county.**

In case execution is issued to a county other than that in which judgment is rendered, and is levied upon real estate in such county, an entry thereof shall be made upon the encumbrance book of that county by the officer making it, showing the same particulars as are required in case of the attachment of real estate, which shall be bound from the time of such entry.

[R60, §3249; C73, §3031; C97, §3958; S13, §3958; C24, 27, 31, 35, 39, §11656; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.9]

**626.10 Duplicate returns and record.**

If real estate is sold under said execution the officer shall make return thereof in duplicate, one of which shall be appended to the execution and returned to the court from which it is issued, the other with a copy of the execution to the district court of the county in which the real estate is situated, which shall be filed by the clerk and handled in the same manner as if such judgment had been rendered and execution issued from the court.

[S13, §3958; C24, 27, 31, 35, 39, §11657; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.10]

[95 Acts, ch 91, §5](#)

**626.11 Return from foreign county.**

When sent into any county other than that in which the judgment was rendered, return may be made by mail. Money cannot thus be sent, except by direction of the party entitled thereto, or the party's attorney.

[C51, §1889; R60, §3250; C73, §3032; C97, §3959; C24, 27, 31, 35, 39, §11658; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.11]

**626.12 Form of execution.**

The execution must intelligibly refer to the judgment, stating the time when and place at which it was rendered, the names of the parties to the action as well as to the judgment, its amount, and the amount still to be collected thereon, if for money; if not, it must state what specific act is required to be performed. If it is against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment and interest out of property of the debtor subject to execution.

[C51, §1890; R60, §3251; C73, §3033; C97, §3960; C24, 27, 31, 35, 39, §11659; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.12]

**626.13 Property in hands of others.**

If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment and interest out of such property.

[R60, §3252; C73, §3034; C97, §3961; C24, 27, 31, 35, 39, §11660; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.13]

**626.14 Delivery of possession and money recovery.**

If it is for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the party to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered subject to execution.

The value of the property for which judgment was recovered shall be specified therein, if a delivery thereof cannot be had, and it shall in that respect be regarded as an execution against property.

[R60, §3253; C73, §3035; C97, §3962; C24, 27, 31, 35, 39, §11661; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.14]

**626.15 Performance of other acts.**

When it requires the performance of any other act, a certified copy of the judgment may be served on the person against whom it is rendered, or upon the person or officer who is required thereby, or by law, to obey the same, and the person's obedience thereto enforced.

[R60, §3254; C73, §3036; C97, §3963; C24, 27, 31, 35, 39, §11662; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.15]

**626.16 Receipt and return.**

Every officer who receives an execution shall provide a receipt, if required, stating the hour when the same was received, and shall make sufficient return of the execution, together with the money collected, on or before the one hundred twentieth day from the date of its issuance.

[R60, §3255; C73, §3037; C97, §3964; C24, 27, 31, 35, 39, §11663; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.16]

2006 Acts, ch 1081, §1; 2006 Acts, ch 1129, §10

**626.17 Principal and surety — order of liability.**

The clerk issuing an execution on a judgment against principal and surety shall state in the execution the order of liability recited in the judgment, and the officer serving it shall exhaust the property of the principal first, and of the other defendants in the order of liability thus stated. To obtain the benefits of [this section](#), the order of liability must be recited in the execution, and the officer holding it must separately return thereon the amount collected from the principal debtor and surety.

[C51, §1915; R60, §3258, 3260, 3261, 3303; C73, §3039, 3041, 3042, 3071; C97, §3966; C24, 27, 31, 35, 39, §11665; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.17]

Analogous provisions, §626.64, and R.C.P. 1.956

**626.18 Duty to point out property.**

Each person subsequently liable shall, if requested by the officer, point out property owned by the party liable, before that person, to obtain the benefits of the provision of [section 626.17](#).

[R60, §3259; C73, §3040; C97, §3966; C24, 27, 31, 35, 39, §11666; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.18]

**626.19 Surety subrogated.**

When the principal and surety are liable for any claim, such surety may pay the same, and recover thereon against all liable to the surety. If a judgment against principal and surety has been paid by the surety, the surety shall be subrogated to all the rights of the creditor, and may take an assignment thereof, and enforce the same by execution or otherwise, as the creditor could have done. All questions between the parties thereto may be heard and determined on motion by the court upon such notice as may be prescribed by it.

[C97, §3967; C24, 27, 31, 35, 39, §11667; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.19]

See R.C.P. 1.982

**626.20 Entry on encumbrance book.**

If real estate is levied upon, except by virtue of a special execution issued in cases foreclosing recorded liens, the officer making the levy shall make an entry in the encumbrance book in the office of the clerk of the district court of the county where the real estate is located, which entry shall constitute notice to all persons of such levy. Such entry shall contain the number and title of the case, date of levy, date of the entry, amount claimed, description of the real estate levied upon, and signature of the officer.

[C31, 35, §11668-c1; C39, §11668.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.20]  
Analogous provision, §639.28

**626.21 Choses in action.**

Judgments, money, bank bills, and other things in action may be levied upon, and sold or appropriated thereunder, and an assignment thereof by the officer shall have the same effect as if made by the defendant.

[C51, §1893; R60, §3272; C73, §3046; C97, §3971; C24, 27, 31, 35, 39, §11672; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.21]

**626.22 Levy on judgment.**

The levy upon a judgment shall be made by entering upon the judgment docket a memorandum of such fact, giving the names of the parties plaintiff and defendant, the court from which the execution issued, and the date and hour of such entry, which shall be signed by the officer serving the execution, and a return made on the execution of the officer's doings in the premises.

[C97, §3971; C24, 27, 31, 35, 39, §11673; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.22]

**626.23 Persons indebted may pay officer.**

After the rendition of judgment, any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness, or so much thereof as is necessary to satisfy the execution, and the person's receipt shall be a sufficient discharge therefor.

[C51, §1894; R60, §3273; C73, §3047; C97, §3972; C24, 27, 31, 35, 39, §11674; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.23]

**626.24 Levy against municipal corporation — tax.**

If no property of a municipal corporation against which execution has issued can be found, or if the judgment creditor elects not to issue execution against such corporation, a tax must be levied as early as practicable to pay off the judgment. When a tax has been so levied and any part thereof shall be collected, the treasurer of such corporation shall pay the same to the clerk of the court in which the judgment was rendered, in satisfaction thereof.

[C51, §1896; R60, §3275; C73, §3049; C97, §3973; C24, 27, 31, 35, 39, §11675; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.24]

**626.25 Unsecured interest in hands of third persons.**

Any interest which is not represented by a security as defined in the uniform commercial code, [section 554.8102](#), owned by the defendant in any company or corporation, and also debts due the defendant and property of the defendant in the hands of third persons, may be levied upon in the manner provided for attaching the same.

[C51, §1892; R60, §3269; C73, §3050; C97, §3974; C24, 27, 31, 35, 39, §11676; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.25]

Garnishment, chapter 642

**626.26 Garnishment.**

Property of the defendant in the possession of another, or debts due the defendant, may be reached by garnishment.

[R60, §3270; C73, §3051; C97, §3975; C24, 27, 31, 35, 39, §11677; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.26]

Garnishment, chapter 642

**626.27 Expiration or return of execution.**

Proceedings by garnishment on execution shall not be affected by its expiration or its return.

[R60, §3271; C73, §3052; C97, §3976; C24, 27, 31, 35, 39, §11678; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.27]

Garnishment, chapter 642

**626.28 Return of garnishment — action docketed.**

Where parties have been garnished under it, the officer shall return to the clerk of court a copy of the execution with all the officer's doings thereon, so far as they relate to the garnishments, and the clerk shall docket an action thereon without fee, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be.

[R60, §3271; C73, §3052; C97, §3976; C24, 27, 31, 35, 39, §11679; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.28]

Garnishment, chapter 642

**626.29 Distress warrant by director of revenue, director of inspections and appeals, or director of workforce development.**

In the service of a distress warrant issued by the director of revenue for the collection of taxes administered by or debts to be collected by the department of revenue, in the service of a distress warrant issued by the director of inspections and appeals for the collection of overpayment debts owed to the department of human services, or in the service of a distress warrant issued by the director of the department of workforce development for the collection of employment security contributions, the property of the taxpayer or the employer in the possession of another, or debts due the taxpayer or the employer, may be reached by garnishment.

[C39, §11679.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.29; [81 Acts, ch 192, §1](#)  
[93 Acts, ch 53, §3](#); [94 Acts, ch 1165, §41](#); [96 Acts, ch 1186, §23](#); [2003 Acts, ch 145, §286](#)

Garnishment, chapter 642

**626.30 Expiration or return of distress warrant.**

Proceedings by garnishment under a distress warrant issued by the Iowa director of revenue or the director of inspections and appeals shall not be affected by its expiration or its return.

[C39, §11679.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.30]  
[93 Acts, ch 53, §4](#); [2003 Acts, ch 145, §286](#)

Garnishment, chapter 642

**626.31 Return of garnishment — action docketed — distress action.**

Where parties have been garnished under a distress warrant issued by the director of revenue or the director of inspections and appeals, the officer shall make return thereof to the court in the county where the garnishee lives, if the garnishee lives in Iowa, otherwise in the county where the taxpayer resides, if the taxpayer lives in Iowa; and if neither the garnishee nor the taxpayer lives in Iowa, then to the district court in Polk county, Iowa; the officer shall make return in the same manner as a return is made on a garnishment made under a writ of execution so far as they relate to garnishments, and the clerk of the district court shall docket an action thereon without fee the same as if a judgment had been recovered against the taxpayer in the county where the return is made, an execution issued thereon, and garnishment made thereunder, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be.

[C39, §11679.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.31]  
[93 Acts, ch 53, §5](#); [2003 Acts, ch 145, §286](#)

Garnishment, chapter 642

**626.32 Joint or partnership property.**

When an officer has an execution against a person who owns property jointly or in common with another, such officer may levy on and take possession of the property owned jointly or

in common, sufficiently to enable the officer to appraise and inventory the same, and for that purpose shall call to the officer's assistance three disinterested persons, which inventory and appraisal shall be returned by the officer with the execution, and shall state in the officer's return who claims to own the property.

[C51, §1917; R60, §3287; C73, §3053; C97, §3977; C24, 27, 31, 35, 39, §11680; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.32]

Analogous provisions, §639.37 et seq.

#### **626.33 Lien — equitable proceeding — receiver.**

The plaintiff shall, from the time such property is so levied on, have a lien on the interest of the defendant therein, and may commence an action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien; and, if deemed necessary or proper, the court may appoint a receiver under the circumstances provided in the chapter relating to receivers.

[R60, §3289 – 3291; C73, §3054; C97, §3978; C24, 27, 31, 35, 39, §11681; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.33]

Receivers, chapter 680

#### **626.34 Personal property subject to security interest — payment.**

Personal property subject to a security interest not exempt from execution may be taken on attachment or execution issued against the debtor, if the officer, or the attachment or execution creditor, within ten days after such levy, shall pay to the secured party the amount of the secured debt and interest accrued, or deposit the same with the clerk of the district court of the county from which the attachment or execution issued, for the use of the secured party, or secure the same as in [this chapter](#) provided.

[C97, §3979; C24, 27, 31, 35, 39, §11682; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.34]

Applicable to attachments, §639.40

#### **626.35 Interest on secured debt.**

When the secured debt is not due as shown by the security agreement, the officer or the attachment or execution creditor, must also pay or deposit with the clerk interest on the principal sum at the rate specified in the security agreement for the term of sixty days from the date of the deposit, unless the debt secured falls due in a less time, in which case interest shall be deposited for such shorter period.

[C97, §3980; C24, 27, 31, 35, 39, §11683; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.35]

#### **626.36 Failure to pay, deposit, or give security.**

If within ten days after such levy the attachment or execution creditor does not pay the amount, make the deposit, or give the security required, the levy shall be discharged, and the property restored to the possession of the person from whom it was taken and the creditor shall be liable to the secured party for any damages sustained by reason of such levy.

[C97, §3981; C24, 27, 31, 35, 39, §11684; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.36]

#### **626.37 Creditor subrogated.**

When such sum is paid to the secured party or deposited with the clerk, the attachment or execution creditor shall be subrogated to all the rights of such holder, and the proceeds of the sale of the collateral shall be first applied to the discharge of such indebtedness and the costs incurred under the writ of attachment or execution.

[C97, §3982; C24, 27, 31, 35, 39, §11685; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.37]

#### **626.38 Holder reinstated.**

If, for any reason, the levy upon the collateral is discharged or released without a sale thereof, the attachment or execution creditor who has paid or deposited the amount of the

secured debt shall have all the rights under such security agreement possessed by the secured party at the time of the levy. If the secured party thereof desires to be reinstated in the party's rights thereunder, the party may repay the money received by the party, with interest thereon at the rate borne by the secured debt for the time it has been held by the party, and demand the return of the security agreement, whereupon the party's rights thereunder shall revert in the party, and the attachment or execution creditor shall be entitled to the deposit made, or any part thereof remaining in the hands of the clerk, or any money returned to the clerk by the secured party.

[C97, §3983; C24, 27, 31, 35, 39, §11686; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.38]

#### **626.39 Statement of amount due.**

The secured party, before receiving the money tendered to the party by the attaching or execution creditor or which was deposited with the clerk, shall state by a signed memorandum the amount due or to become due and deliver the same along with the security agreement, unless it has been filed as the financing statement, to the person paying the said amount or the clerk with whom the deposit is made, and the secured party shall only receive the amount so stated to be due, and the surplus, if any, shall be returned to the person making the deposit.

[C97, §3984; C24, 27, 31, 35, 39, §11687; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.39]

#### **626.40 Indemnifying bond.**

When the attaching or execution creditor thus pays or deposits the amount of the claim under the security agreement, the creditor shall not be required to give an indemnifying bond on notice to the sheriff by the holder of the security agreement of the holder's right to the property thereunder, or if one has been given, it shall be released.

[C97, §3985; C24, 27, 31, 35, 39, §11688; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.40]

#### **626.41 Sale — costs — surplus.**

If under execution sale the collateral does not sell for enough to pay the secured debt, interest, and costs of sale, the judgment creditor shall be liable for all costs thus made, but if a greater sum is realized, the officer conducting the sale shall at once pay to the secured party the amount due thereunder, and apply the surplus on the execution.

[C97, §3986; C24, 27, 31, 35, 39, §11689; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.41]

#### **626.42 Statement of indebtedness.**

For the purpose of enabling the attaching or execution creditor to determine the amount to be tendered or deposited to hold the levy under the writ of attachment or execution, the person entitled to receive payment of the secured debt shall deliver to any such person, upon written demand therefor, a statement in writing under oath, showing the nature and amount of the original debt, the date and the amount of each payment, if any, which has been made thereon, and an itemized statement of the amount then due and unpaid.

[C97, §3987; C24, 27, 31, 35, 39, §11690; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.42]

#### **626.43 Contest as to validity or amount.**

If the right of the secured party to receive such or any sum is for any reason questioned by the levying creditor, the party may, within ten days after levy, or after demand is made for a statement of the amount due as above provided, commence an action in equity or contest such right upon filing a bond in a penalty double the amount of such security interest, or double the value of the property levied upon, conditioned either for the payment of any sum found due



on said security interest to the person entitled thereto, or for the value of the property levied upon, as the party ordering the levy may elect, with sureties to be approved by the clerk.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11691; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.43]

#### **626.44 Nonresident — service — transfer of action.**

If such secured party is a nonresident or the party's residence is unknown, service may be made by publication as in other actions, but if such residence becomes known before final submission, the court may order personal service to be made. If commenced at law, the court may transfer the same to the equity side as in other cases.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11692; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.44]

Service by publication, R.C.P. 1.310

#### **626.45 Receiver — decree — costs.**

The court may appoint a receiver, and shall determine the amount due on the security agreement, the value of the property levied upon, and all other questions properly presented, and may continue and preserve or dismiss the lien of the levy, the costs to be taxed to the losing party as in other cases.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11693; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.45]

Costs, chapter 625

#### **626.46 Various security agreements — priority.**

If there are two or more security agreements, the creditor may admit the validity of one or more, and make the required deposit as to such, and contest the other, and where there are two or more such security agreements, each of which is questioned, a failure to establish the invalidity of all shall not defeat the rights of the levying creditor, but in such case the decree shall determine the priority of liens, and direct the order of payment out of the proceeds of the property which shall be sold under special execution to be awarded in said cause.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11694; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.46]

#### **626.47 Other remedies.**

Nothing in [this chapter](#) contained shall be construed to forbid or in any way affect the right of a creditor to contest in any other way the validity of any security agreement.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11695; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.47]

#### **626.48 Failure to make statement — effect.**

A failure to make the statement, when required as above provided, shall have the effect to postpone the priority of the security interest and give the levy of the writ of attachment or execution priority over the claim of the holder thereof.

[C97, §3989; C24, 27, 31, 35, 39, §11696; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.48]

#### **626.49 Where secured party garnished.**

If the secured party, before the levy of a writ of attachment or execution, has been garnished at the suit of a creditor of a debtor, a creditor desiring to seize the collateral under a writ of attachment or execution shall pay to the secured party, or deposit with the clerk, in addition to the secured debt, the sum claimed under the garnishment, and the provisions of [this chapter](#), so far as applicable, in all respects shall govern proceedings relating thereto.

[C97, §3990; C24, 27, 31, 35, 39, §11697; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.49]

Garnishment, chapter 642

**626.50 Duty to levy — notice of ownership or exemption — notice to defendant.**

An officer is bound to levy an execution on any personal property in the possession of, or that the officer has reason to believe belongs to, the defendant, or on which the plaintiff directs the officer to levy, after having received written instructions for the levy from the plaintiff or the attorney who had the execution issued to the sheriff, unless the officer has received notice in writing under oath from some other person, or that person's agent or attorney, that the property belongs to the person, stating the nature of the person's interests in the property, how and from whom the person acquired the property, and the consideration paid for the property; or from the defendant, that the property is exempt from execution.

The officer making the levy shall promptly serve written notice of the levy on the defendant. The notice shall be served in the same manner as provided for original notice.

[This section](#) is not applicable to garnishment proceedings.

[C51, §1916; R60, §3277; C73, §3055; C97, §3991; C24, 27, 31, 35, 39, §11698; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.50]

[88 Acts, ch 1062, §1](#); [88 Acts, ch 1133, §3](#); [92 Acts, ch 1092, §1](#)

Applicable to attachments, §639.41

**626.51 Failure to give notice — effect.**

Failure to give such notice shall not deprive the party of any other remedy.

[C97, §3991; C24, 27, 31, 35, 39, §11699; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.51]

**626.52 Right to release levy.**

If after levy the officer receives such notice, such officer may release the property unless a bond is given as provided in [section 626.54](#).

[C51, §1916; R60, §3277; C73, §3055; C97, §3991; C24, 27, 31, 35, 39, §11700; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.52]

**626.53 Exemption from liability.**

The officer shall be protected from all liability by reason of such levy until the officer receives such written notice.

[C51, §1916; R60, §3277; C73, §3055; C97, §3991; C24, 27, 31, 35, 39, §11701; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.53]

**626.54 Indemnifying bond — sale and return.**

When the officer receives such notice the officer may forthwith give the plaintiff, the plaintiff's agent, or attorney, notice that an indemnifying bond is required. Bond may thereupon be given by or for the plaintiff, with one or more sufficient sureties, to be approved by the officer, to the effect that the obligors will indemnify the officer against the damages which the officer may sustain in consequence of the seizure or sale of the property, and will pay to any claimant thereof the damages the claimant may sustain in consequence of the seizure or sale, and will warrant to any purchaser of the property such estate or interest therein as is sold; and thereupon the officer shall proceed to subject the property to the execution, and shall return the indemnifying bond to the court from which the execution issued.

[R60, §3277; C73, §3056; C97, §3992; C24, 27, 31, 35, 39, §11702; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.54]

Applicable to attachments, §639.41

**626.55 Failure to give bond.**

If such bond is not given, the officer may refuse to levy, or if the officer has done so, and the bond is not given in a reasonable time after it is required by the officer, the officer may restore the property to the person from whose possession it was taken, and the levy shall stand discharged.

[R60, §3278; C73, §3057; C97, §3993; C24, 27, 31, 35, 39, §11703; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.55]

**626.56 Application of proceeds.**

Where property for the sale of which the officer is indemnified sells for more than enough to satisfy the execution under which it was taken, the surplus shall be paid into the court to which the indemnifying bond is directed to be returned. The court may order such disposition or payment of the money to be made, temporarily or absolutely, as may be proper in respect to the rights of the parties interested.

[R60, §3280; C73, §3059; C97, §3994; C24, 27, 31, 35, 39, §11704; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.56]

**626.57** Repealed by 72 Acts, ch 1124, §282.**626.58 Stay of execution — exceptions.**

On all judgments for the recovery of money, except those rendered on any appeal or writ of error, or in favor of a laborer or mechanic for wages, or against one who is surety in the stay of execution, or against any officer, person, or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a stay of execution, if the defendant therein shall, within ten days from the entry of judgment, procure one or more sufficient freehold sureties to enter into a bond, acknowledging themselves security for the defendant for the payment of the judgment, interest, and costs from the time of rendering judgment until paid, as follows:

1. If the sum for which judgment was rendered, inclusive of costs, does not exceed one hundred dollars, three months.

2. If such sum and costs exceed one hundred dollars, six months.

[R60, §3293; C73, §3061; C97, §3996; C24, 27, 31, 35, 39, §11706; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.58]

**626.59 Affidavit of surety.**

Officers approving stay bonds shall require the affidavit of the signers thereof, unless waived in writing by the party in whose favor the judgment is rendered, that they own property not exempt from execution, and aside from encumbrance, to the value of twice the amount of the judgment.

[C73, §3062; C97, §3997; C24, 27, 31, 35, 39, §11707; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.59]

**626.60 Stay waives appeal.**

No appeal shall be allowed after a stay of execution has been obtained.

[R60, §3294; C73, §3063; C97, §3998; C24, 27, 31, 35, 39, §11708; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.60]

**626.61 Bond — approval — recording — effect.**

The sureties for stay of execution may be taken and approved by the clerk, and the bond shall be recorded in a book kept for that purpose, and have the force and effect of a judgment confessed from the date thereof against their property, and shall be indexed in the proper judgment docket, as in case of other judgments.

[R60, §3295, 3298; C73, §3064; C97, §3999; C24, 27, 31, 35, 39, §11709; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.61]

**626.62 Execution recalled.**

When the bond is accepted and approved after execution has been issued, the clerk shall immediately notify the sheriff of the stay, and the officer shall forthwith return the execution with the officer's doings thereon.

[R60, §3296; C73, §3065; C97, §4000; C24, 27, 31, 35, 39, §11710; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.62]

**626.63 Property released.**

All property levied on before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be relinquished by the officer, upon stay of execution being entered.

[R60, §3297; C73, §3066; C97, §4001; C24, 27, 31, 35, 39, §11711; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.63]

**626.64 Execution against principal and sureties.**

At the expiration of the stay, the clerk shall issue a joint execution against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein, and the liability of such sureties shall be subject to that of their principal as provided in [this chapter](#).

[R60, §3299; C73, §3067; C97, §4002; C24, 27, 31, 35, 39, §11712; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.64]

Analogous provisions, §626.17, R.C.P. 1.956

**626.65 Objections by surety.**

When any court shall render judgment against two or more persons, any of whom is surety for any other in the contract on which judgment is founded, there shall be no stay of execution allowed, if the surety objects thereto at or before the time of rendering the judgment, whereupon it shall be ordered by the court that there be no stay, unless the surety for the stay of execution will undertake specifically to pay the judgment in case the amount thereof cannot be levied of the principal defendant, and the judgment shall recite that the liability of such stay is prior to that of the objecting surety.

[R60, §3300; C73, §3068; C97, §4003; C24, 27, 31, 35, 39, §11713; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.65]

**626.66 Stay terminated by surety.**

Any surety for the stay of execution may file with the clerk an affidavit, stating that the surety verily believes the surety will be compelled to pay the judgment, interest, and costs thereon unless execution issues immediately, and gives notice thereof in writing to the party for whom the surety is surety; and the clerk shall thereupon issue execution forthwith, unless other sufficient surety be entered before the clerk within five days after such notice is given as in other cases.

[R60, §3301; C73, §3069; C97, §4004; C24, 27, 31, 35, 39, §11714; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.66]

**626.67 Other security given.**

If other sufficient surety is given, it shall have the force of the original surety entered before the filing of the affidavit, and shall discharge the original surety.

[R60, §3302; C73, §3070; C97, §4005; C24, 27, 31, 35, 39, §11715; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.67]

**626.68 Lien not released.**

Where a stay of execution has been taken, such confessed judgment shall not release any judgment lien by virtue of the original judgment for the amount then due.

[R60, §3303; C73, §3071; C97, §4006; C24, 27, 31, 35, 39, §11716; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.68]

**626.69 Labor or wage claims preferred.**

When the property of any company, corporation, firm, or person shall be seized upon by any process of any court, or placed in the hands of a receiver, trustee, or assignee, or seized by the action of creditors, for the purpose of paying or securing the payment of the debts of such company, corporation, firm, or person, the debts, or wages as defined under [section 91A.2, subsection 7](#), owing to all laborers or employees other than officers of such companies, for labor or work performed or services rendered within six months preceding the seizure or transfer of such property, shall be considered and treated as a preferred debt and paid in full,

or if there are insufficient funds realized from such property to pay the same in full, then, after the payment of costs, ratably out of the funds remaining.

[C97, §4019; S13, §4019; C24, 27, 31, 35, 39, §11717; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.69]

[2006 Acts, ch 1025, §1](#)

Labor or wage claims preferred, §633.425, 680.7, 681.13

#### **626.70 Exceptions.**

Such preference shall be junior and inferior to mechanics' liens for labor in opening and developing coal mines.

[C97, §4019; S13, §4019; C24, 27, 31, 35, 39, §11718; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.70]

#### **626.71 Statement of claim — allowance.**

Any employee desiring to enforce a claim for wages, at any time after the seizure of the property under execution or writ of attachment or under any other authority, and before sale thereof is ordered, shall present to the officer levying on such property or to such receiver, trustee, or assignee, or to the court having custody of such property or from which such process issued, or person charged with such property, a statement under oath, showing the amount due after allowing all just credits and setoffs, and the kind of work for which such wages are due, and when performed; and unless objection be made thereto as provided in [section 626.72](#), such claim shall be allowed and paid to the person entitled thereto, after first paying all costs occasioned by the proceeding out of the proceeds of the sale of the property so seized or placed in the hands of a receiver, trustee, or assignee, or court, or person charged with the same, subject, however, to the provisions of [section 626.69](#).

[C97, §4020; S13, §4020; C24, 27, 31, 35, 39, §11719; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.71]

#### **626.72 Contest.**

Any person interested may contest any claim or part thereof by filing objections thereto, supported by affidavit, with such court, receiver, trustee, or assignee, and its validity shall be determined in the same way the validity of other claims are which are sought to be enforced against such property, provided that where the claim is filed with a person charged with the property other than the officers above enumerated and a contest is made, the cause shall be transferred to the district court, and there docketed and determined.

[C97, §4021; S13, §4021; C24, 27, 31, 35, 39, §11720; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.72]

#### **626.73 Priority.**

Claims of employees for labor or wages, if not contested, or if allowed after contest, shall have priority, unless otherwise stated in [this chapter](#), over all claims against or liens upon such property, except prior mechanics' liens for labor in opening or developing coal mines as allowed by law.

[C97, §4022; C24, 27, 31, 35, 39, §11721; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.73]

[2006 Acts, ch 1025, §2](#)

#### **626.74 Notice of sale.**

The officer must give four weeks' notice of the time and place of selling real property, and three weeks' notice of personal property.

[C51, §1905; R60, §3310; C73, §3079; C97, §4023; C24, 27, 31, 35, 39, §11722; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.74]

#### **626.75 Posting and publication — compensation.**

Notice shall be posted in at least three public places of the county, one of which shall be at the county courthouse. In addition to which, in case of the sale of real estate, or where

personal property with a value of two hundred dollars or greater is to be sold, there shall be two weekly publications of such notice in some newspaper printed in the county, to be selected by the party causing the notice to be given, the first at least four weeks in the case of real estate, or three weeks in the case of personal property, before the date of sale, and the second at a later time before the date of sale. The compensation for such publication shall be the same as is provided by law for legal notices.

[C51, §1906; R60, §3311; C73, §3080; C97, §4024; S13, §4024; C24, 27, 31, 35, 39, §11723; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.75]

[90 Acts, ch 1058, §1](#)

#### **626.76 Labor commissioner to represent.**

The labor commissioner, appointed pursuant to [section 91.2](#), may, at the labor commissioner's discretion, represent laborers or employees seeking payment for labor or wage claims from the receiver, trustee, or assignee, or the court, or the person charged with the property, in accordance with and subject to the provisions of [sections 626.69](#) and [626.71](#).

[2006 Acts, ch 1024, §1, 2](#)

#### **626.77 Penalty for selling without notice.**

An officer selling without the notice prescribed in [sections 626.74](#) and [626.75](#), shall forfeit one hundred dollars to the defendant in execution, in addition to the actual damages sustained by either party; but the validity of the sale is not thereby affected.

[C51, §1907; R60, §3312; C73, §3081; C97, §4027; S13, §4027; C24, 27, 31, 35, 39, §11725; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.77]

#### **626.78 Notice to defendant.**

If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve the debtor with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale, which notice shall be served in the manner provided by rule of civil procedure 1.305(1). However, upon the filing of an affidavit that the debtor is intentionally evading service of process or otherwise cannot be served despite repeated and diligent attempts, the notice may be served by placing the notice in a plain opaque envelope, addressed to the defendant and marked personal and confidential, by affixing the envelope to a main entrance of the premises subject to sale, and by mailing a copy of the notice to the debtor at the debtor's last known address by ordinary mail.

[R60, §3318; C73, §3087; C97, §4025; S13, §4025; C24, 27, 31, 35, 39, §11726; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.78]

[2006 Acts, ch 1132, §5, 16](#)

#### **626.79 Setting aside sale.**

Sales made without the notice required in [section 626.78](#) may be set aside on motion made within ninety days thereafter.

[R60, §3318; C73, §3087; C97, §4025; S13, §4025; C24, 27, 31, 35, 39, §11727; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.79]

#### **626.80 Time and manner.**

The sale must be at public auction, between nine o'clock in the forenoon and four o'clock in the afternoon, and the hour of the commencement of the sale must be fixed in the notice.

The sheriff shall receive and give a receipt for a sealed written bid submitted prior to the public auction. The sheriff may require all sealed written bids to be accompanied by payment of any fees required to be paid at the public auction by the purchaser, to be returned if the person submitting the sealed written bid is not the purchaser. The sheriff shall keep all written bids sealed until the commencement of the public auction, at which time the sheriff shall open and announce the written bids as though made in person. A party who has appeared in the foreclosure may submit a written bid, which shall include a facsimile number or electronic mail address where the party can be notified of the results of the sale.

If a party submitting a winning written bid does not pay the amount of the bid in certified funds in the manner in which the sheriff in the notice directs, such bid shall be deemed canceled and the sheriff shall certify the next highest bidder as the successful bidder of the sale either within twenty-four hours for an electronic funds transfer or forty-eight hours otherwise, of notification of the sale results. A sheriff may refuse to accept written bids from a bidder other than the judgment creditor if the bidder or the bidder's agent in the action has demonstrated a pattern of nonpayment on previously accepted bids.

[C51, §1908; R60, §3313; C73, §3082; C97, §4028; C24, 27, 31, 35, 39, §11728; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.80]

[89 Acts, ch 123, §1](#); [2006 Acts, ch 1132, §6, 16](#)

State or municipality as purchaser, chapter 569

2006 amendments apply to actions commenced on or after July 1, 2006; 2006 Acts, ch 1132, §16

#### **626.81 Sale postponed.**

When there are no bidders, or when the amount offered is grossly inadequate, when from any cause the sale is prevented from taking place on the day fixed, when requested by the judgment creditor, or when the parties so agree, the officer may postpone the sale without being required to give any further notice thereof, which postponement shall be publicly announced at the time the sale was to have been made, but not more than two such adjournments of not more than sixty days in the aggregate shall be made, except by agreement of the parties in writing and made a part of the return upon the execution.

[C51, §1909; R60, §3314; C73, §3083; C97, §4029; C24, 27, 31, 35, 39, §11729; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.81]

[2009 Acts, ch 51, §3, 17](#)

#### **626.82 Overplus.**

When the property sells for more than the amount required to be collected, the overplus must be paid to the debtor, unless the officer has another execution in the officer's hands on which said overplus may be rightfully applied, or unless there are liens upon the property which ought to be paid therefrom, and the holders thereof make claim to such surplus and demand application thereon, in which case the officer shall pay the same into the hands of the clerk of the district court, and it shall be applied as ordered by the court.

[C51, §1910; R60, §3315; C73, §3084; C97, §4030; C24, 27, 31, 35, 39, §11730; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.82]

#### **626.83 Deficiency — additional execution.**

If the property levied on sells for less than sufficient to satisfy the execution, the judgment holder may order out another, which shall be credited with the amount of the previous sale. The proceedings under the second execution shall conform to those hereinbefore prescribed.

[C51, §1911; R60, §3316; C73, §3085; C97, §4031; C24, 27, 31, 35, 39, §11731; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.83]

#### **626.84 Plan of division of land.**

At any time before nine o'clock a.m. of the day of the sale, the debtor may deliver to the officer a plan of division of the land levied on, subscribed by the debtor, and in that case the officer shall sell, according to said plan, so much of the land as may be necessary to satisfy the debt and costs, and no more. If no such plan is furnished, the officer may sell without any division.

[R60, §3319; C73, §3088; C97, §4032; C24, 27, 31, 35, 39, §11732; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.84]

#### **626.85 Failure of purchaser to pay — optional procedure.**

When the purchaser fails to pay the money when demanded, the judgment holder or the holder's attorney may elect to proceed against the purchaser for the amount; otherwise the



sheriff shall treat the sale as a nullity, and may sell the property on the same day, or after postponement as above authorized.

[C51, §1913; R60, §3320; C73, §3089; C97, §4033; C24, 27, 31, 35, 39, §11733; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.85]

**626.86 Sales vacated for lack of lien.**

When any person shall purchase at a sheriff's sale any real estate on which the judgment upon which the execution issued was not a lien at the time of the levy, and which fact was unknown to the purchaser, the court shall set aside such sale on motion, notice having been given to the debtor as in case of action, and a new execution may be issued to enforce the judgment, and, upon the order being made to set aside the sale, the sheriff or judgment creditor shall pay over to the purchaser the purchase money; said motion may also be made by any person interested in the real estate.

[R60, §3321; C73, §3090; C97, §4034; C24, 27, 31, 35, 39, §11734; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.86]

**626.87 Money — things in action.**

Money levied upon may be appropriated without being advertised or sold, and so may bank bills, drafts, promissory notes, or other papers of the like character, if the plaintiff will receive them at their par value as cash, or if the officer can exchange them for cash at that value.

[C51, §1914; R60, §3322; C73, §3091; C97, §4035; C24, 27, 31, 35, 39, §11735; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.87]

**626.88 Real estate of deceased judgment debtor.**

When a judgment has been obtained against a decedent in the decedent's lifetime, the plaintiff may file a petition in the office of the clerk of the court where the judgment is rendered, against the executor, the heirs, and devisees of real estate, if such there be, setting forth the facts, and that there is real estate of the deceased, describing its location and extent, and praying the court to award execution against the same.

[C51, §1918; R60, §3323; C73, §3092; C97, §4036; C24, 27, 31, 35, 39, §11736; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.88]

**626.89 Notice.**

The person against whom the petition is filed shall be notified by the plaintiff to appear within twenty days following completion of service and show cause, if any, why execution should not be awarded.

[C51, §1919; R60, §3324; C73, §3093; C97, §4037; C24, 27, 31, 35, 39, §11737; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.89]

**626.90 Service and return.**

The notice must be served and returned in the ordinary manner, and the same length of time shall be allowed for appearance as in civil actions, and service of such notice on nonresident defendants may be had in such cases by publication.

[C51, §1920; R60, §3325; C73, §3094; C97, §4038; C24, 27, 31, 35, 39, §11738; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.90]

See also R.C.P. 1.303

Service by publication, R.C.P. 1.310

**626.91 Execution awarded.**

At the proper time, the court shall award the execution, unless sufficient cause is shown to the contrary, but the nonage of the heirs or devisees shall not be held such sufficient cause.

[C51, §1921, 1922; R60, §3326, 3327; C73, §3095, 3096; C97, §4039; C24, 27, 31, 35, 39, §11739; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.91]



**626.92 Mutual judgments — setoff.**

Mutual judgments, executions on which are in the hands of the same officer, may be set off the one against the other, except the costs, but if the amount collected on the large judgment is sufficient to pay the costs of both, such costs shall be paid therefrom.

[C51, §1923; R60, §3328; C73, §3097; C97, §4040; C24, 27, 31, 35, 39, §11740; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.92]

**626.93 Personal property and leasehold interests — appraisalment.**

Personal property, and leasehold interests in real property having less than two years of an unexpired term, levied upon and advertised for sale on execution, must be appraised before sale by two disinterested householders of the neighborhood, one of whom shall be chosen by the execution debtor and the other by the plaintiff, or, in case of the absence of either party, or if either or both parties neglect or refuse to make choice, the officer making the levy shall choose one or both, as the case may be, who shall forthwith return to said officer a just appraisalment, under oath, of said property if they can agree; if they cannot, they shall choose another disinterested householder, and with that householder's assistance shall complete such appraisalment, and the property shall not, upon the first offer, be sold for less than two-thirds of said valuation; but if offered at the same place and hour of the day as advertised upon three successive days, and no bid is received equal to two-thirds of the appraised value thereof, then it may be sold for one-half of said valuation.

[C73, §3100; C97, §4041; C24, 27, 31, 35, 39, §11741; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.93]

**626.94 Property unsold — optional procedure.**

Subject to the provisions of [section 626.93](#), when property is unsold for want of bidders, the levy still holds good; and, if there be sufficient time, it may again be advertised, or the execution returned and one issued commanding the officer to sell the property, describing it, previously levied on, to which a clause may be added that, if such property does not produce a sum sufficient to satisfy such execution, the officer shall proceed to make an additional levy, on which the officer shall proceed as on other executions; or the plaintiff may, in writing filed with the clerk, abandon such levy, upon paying the costs thereof; in which case execution may issue with the same effect as if none had ever been issued.

[C51, §1912; R60, §3317; C73, §3086; C97, §4042; C24, 27, 31, 35, 39, §11742; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.94]

**626.95 Deed or certificate.**

If the property sold is not subject to redemption, the sheriff must execute a deed therefor to the purchaser; but, if subject to redemption, a certificate, containing a description of the property and the amount of money paid by such purchaser, and stating that, unless redemption is made within one year thereafter, or such other time as may be specifically provided for particular actions according to law, the purchaser or the purchaser's heirs or assigns will be entitled to a deed for the same.

[C51, §1925; R60, §3331; C73, §3101; C97, §4044; C24, 27, 31, 35, 39, §11743; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.95]

**626.96 Duplicate issued in case of loss.**

When any person, firm, or corporation to whom a sheriff's certificate of sale has been issued or an assignee thereof shall file in the office of the clerk of the district court in which the certificate was issued and in said action, a verified application signed by the purchaser or assignee, the purchaser's or assignee's agent, legal representative or attorney that the outstanding sheriff's certificate of sale in said action has been lost or destroyed, the court shall fix a time for hearing thereon and prescribe the notice therefor and the manner of service thereof on the parties to said action or their successors in interest, and on said hearing if the court finds that the sheriff's certificate of sale issued in said cause has been lost or destroyed, shall order the sheriff of said county to issue a duplicate certificate of sale as of the date of the original certificate which shall have the same force and effect as the original, and any deed

executed thereunder shall have the same force and effect as if executed under the original certificate of sale.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.96]

#### **626.97 Cancellation after eight years.**

After eight years have elapsed from the date of issuance of any sheriff's certificate of sale, and no action has been taken by the holder of such certificate to obtain a deed thereunder, it shall be the duty of the sheriff and clerk of the district court to cancel such sale and certificate of record and all rights thereunder shall be barred.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.97]

#### **626.98 Deed.**

If the debtor or the debtor's assignee fails to redeem, the sheriff then in office must, at the end of the period for redemption provided by law for the particular action, execute a deed to the person who is entitled to the certificate as hereinbefore provided, or to that person's assignee. If the person entitled is dead, the deed shall be made to the person's heirs.

[C51, §1946; R60, §3354; C73, §348, 3124; C97, §4062; C24, 27, 31, 35, 39, §11744; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.98]

#### **626.99 Constructive notice — recording.**

The purchaser of real estate at a sale on execution need not place any evidence of the person's purchase upon record until sixty days after the expiration of the full time of redemption. Up to that time the publicity of the proceedings is constructive notice of the rights of the purchaser.

[C51, §1947; R60, §3355; C73, §3125; C97, §4063; C24, 27, 31, 35, 39, §11745; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.99]

#### **626.100 Presumption.**

Deeds executed by a sheriff in pursuance of the sales contemplated in [this chapter](#) are presumptive evidence of the regularity of all previous proceedings in the case, and may be given in evidence without preliminary proof.

[C51, §1948; R60, §3356; C73, §3126; C97, §4064; C24, 27, 31, 35, 39, §11746; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.100]

#### **626.101 Damages for injury to property.**

When real estate has been sold on execution, the purchaser thereof, or any person who has succeeded to the purchaser's interest, may, after the estate becomes absolute, recover damages for any injury to the property committed after the sale and before possession is delivered under the conveyance.

[C51, §1949; R60, §3357; C73, §3127; C97, §4065; C24, 27, 31, 35, 39, §11747; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.101]

Recovery for waste, §658.7

#### **626.102 Repealed by 72 Acts, ch 1124, §282.**

#### **626.103 Death of holder of judgment.**

The death of any or all of the joint owners of a judgment shall not prevent an execution being issued thereon, but on any such execution the clerk shall endorse the fact of the death of such of them as are dead, and if all are dead, the names of their personal representatives, if the judgment passed to the personal representatives, or the names of the heirs of such deceased person, if the judgment was for real property.

[R60, §3482; C73, §3130; C97, §4067; C24, 27, 31, 35, 39, §11749; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.103]

**626.104 Officer's duty.**

In acting upon an execution, so endorsed, the sheriff shall proceed as if the surviving owners, or the personal representatives or heirs as above provided, were the only owners of the judgment upon which it was issued, and take bonds accordingly.

[R60, §3483; C73, §3131; C97, §4068; C24, 27, 31, 35, 39, §11750; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.104]

**626.105 Affidavit required.**

Before making the endorsements as above provided, an affidavit shall be filed with the clerk by one of the owners of such judgment, or one of such personal representatives or heirs, or their attorney, of the death of such owners as are dead, and that the persons named as such are the personal representatives or heirs, and in the case of personal representatives they shall file with the clerk a certificate of their qualification, unless their appointment is by the court from which the execution issues, in which case the record of such appointment shall be sufficient evidence of the fact.

[R60, §3484; C73, §3132; C97, §4069; C24, 27, 31, 35, 39, §11751; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.105]

**626.106 Execution quashed.**

Any debtor in such a judgment may move the court to quash an execution on the ground that the personal representatives or heirs of a deceased judgment creditor are not properly stated in the endorsement on the execution.

[R60, §3486; C73, §3134; C97, §4070; C24, 27, 31, 35, 39, §11752; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.106]

**626.107 Death of part of defendants.**

The death of part of the joint debtors in a judgment shall not prevent execution being issued thereon, but, when issued, it shall operate alone on the survivors and their property.

[R60, §3485; C73, §3133; C97, §4071; C24, 27, 31, 35, 39, §11753; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.107]

**626.108 Fee bill execution.**

After the expiration of sixty days from the rendition of a final judgment not appealed, removed, or reversed, the clerk of the court may, and, upon demand of any party entitled to any part thereof, shall, issue a fee bill for all costs of such judgment, which shall have the same force and effect as an execution issued by such officer; and shall be served and executed in the same manner.

[C73, §3842; C97, §1299; C24, 27, 31, 35, 39, §11754; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.108]

**626.109 Public property — state.**

A judgment against a department, agency, division, or official of the state does not create or constitute a lien against public property held by the state.

[93 Acts, ch 87, §13, 14](#)

See also §627.18