

Clay County Sheriff's Office - Execution and Replevin Requirements

A. Execution on Personal Property:

1. Per Florida Statute 30.231(3) provide one of the following for the writ of execution:

- a. **Original** writ of execution
- b. **Certified copy** of the writ or
- c. **Electronic copy** of the writ, which was **signed and certified** by the Clerk of Court

2. The writ of execution will be in the format as prescribed by the Florida Rules of Civil Procedure (Form 1.914), and will include wording to comply with Florida Statute 55.03

Note: Per Florida Statute 55.03 (2) and 55.03(3) the interest rates awarded will go through the end of the year that it was awarded and then it is adjusted annually to the rate set by the Chief Financial Officer. Effective July 1, 2011 (CH 2011-169).

Writ Format for Judgments prior to 12-31-2011:

YOU ARE HEREBY COMMANDED to levy on the goods and chattels, lands and tenements of (**Debtor**), in the judgment sum of (**\$**), with legal interest at the rate of (**%**) a year, from (**Month-Day-Year**) through the end of (**Year**), and thereafter shall bear interest at the rate set by the Chief Financial Officer of the State of Florida, and as governed by Florida Statute 55.03, until paid and that you have this before said Court when satisfied.

Example: YOU ARE HEREBY COMMANDED to levy on the goods and chattels, lands and tenements of (**Debtor**), in the judgment sum of (**\$**), with legal interest at the rate of 11% a year, from **November 09, 2008** through **12-31-2011**, and thereafter shall bear interest at the rate set by the Chief Financial Officer of the State of Florida, and as governed by Florida Statute 55.03, until paid and that you have this before said Court when satisfied.

Writ Format for Judgments after 01-01-2012:

YOU ARE HEREBY COMMANDED to levy on the goods and chattels, lands and tenements of (**Debtor**), in the judgment sum of (**\$**), with legal interest at the rate of (**%**) a year, from (**Month-Day-Year**) through the end of (**Year**), and thereafter shall bear interest at the rate

set by the Chief Financial Officer of the State of Florida, and as governed by Florida Statute 55.03, until paid and that you have this before said Court when satisfied.

Example: YOU ARE HEREBY COMMANDED to levy on the goods and chattels, lands and tenements of (**Debtor**), in the judgment sum of (**\$**), with legal interest at the rate of **4.75%** a year, from **November 09, 2012** through **12-31-2012**, and thereafter shall bear interest at the rate set by the Chief Financial Officer of the State of Florida, and as governed by Florida Statute 55.03, until paid and that you have this before said Court when satisfied

3. Specific and complete levy instructions per Florida Statute 30.30, to include but not limited to the following:

- a. Payment statement
- b. Balance owed
- c. Property specifically described to include the serial number or vehicle identification number
- d. Harmless statement
- e. Provide the address or addresses where the personal property can be located (Per Florida Statute 30.321(3)).
- f. Cost deposit statement (Per Florida Statute 30.231(2))
- g. Call or write for an exemplar, if needed

4. Proof of ownership, if titled.

5. Judgment lien certificate(s) (www.sunbiz.org). Optional, but it establishes lien seniority.

6. Creditors Affidavit that is not limited to but shall include the following paragraphs per Florida Statute 56.21 and 56.27:

- a. Per Florida Statute 56.27(4)(a) include one of the following statements:

I have reviewed the Florida Department of State Division of Corporations database or judgment lien records established in accordance with ss. 55.201-55.209 at www.sunbiz.org and that the information contained in the affidavit based on that review is true and correct. I found **NO** judgment liens other than the lien of the judgment creditor in the litigation.

- i. JLC#,
- ii. Name,

- iii. Date filed,
- iv. \$ Amount,
- v. %
- vi. Attorney info, if applicable

Note: List your judgment lien information even if it's the only one.

≈ or ≈

I have reviewed the Florida Department of State Division of Corporations database or judgment lien records established in accordance with ss. 55.201-55.209 and that the information contained in the affidavit based on that review is true and correct. I found the following judgments liens, **starting with the most senior and ending with the most junior in numerical order.**

Example:

1. JLC #, Name, Date Filed, \$ Amount, %, and Attorney Info (Most Senior)
2. JLC #, Name, Date Filed, \$ Amount, %, and Attorney Info (Junior)
3. JLC #, Name, Date Filed, \$ Amount, %, and Attorney Info (Next Junior)

Note: All judgment liens to include your own must be listed.

Note: Do NOT use see attachment(s) or enclosure(s) in your affidavit or it will be returned. You must be specific in identifying which judgment lien is senior, then who is next in seniority, etc...the Sheriff cannot determine or assume seniority, you must make your list absolutely clear.

b. Per Florida Statute 56.21 include one of the following statements:

I have searched the Florida Secured Transaction Registry (www.floridaucc.com) database and found the following secured creditor(s), who have filed a financing statement as provided in part V of Chapter 679 in the name of the judgment debtor(s) reflecting a security interest in property of the kind to be sold at the execution sale. **(List by name)**

≈ or ≈

I have searched the Florida Secured Transaction Registry (www.floridaucc.com) database and found **NO** filings by secured creditors as provided in part V of Chapter

679 in the name of the judgment debtor(s) reflecting a security interest in property of the kind to be sold at the execution sale.

c. Per Florida Statute 56.27 include one of the following statements:

I have found other liens (recorded mortgage(s), financing statements, tax warrants, or other liens) and **listed them by name as follows:**

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I found **NO** other liens (recorded mortgage(s), financing statements, tax warrants, or other liens).

d. If the defendant's name on the title varies from the writ of executions, include a same name statement.

e. If there is a co-owner listed on the title then list the co-owner's name.

f. How the vehicle is titled statement:

i. Titled between two co-owners with "OR"

When there is a registered co-owner that is **NOT** named as a defendant in the body of the Writ, the creditor's affidavit will need to state that the vehicle is titled as John Doe "OR" Jane Doe.

ii. Titled between two co-owners with "AND"

When there is a registered co-owner that is **NOT** named as a defendant then the creditor's affidavit will need to state that the co-owners are **NOT** married, therefore it does not create the entity of marriage.

g. Per Florida Statute 56.21 include one of the following statements:

The defendant is NOT represented by an attorney in this case.

≈ or ≈

The defendant is represented by John Doe of Doe & Doe Attorneys at Law.

h. Per Florida Statute 56.21 and 56.27(4) include the following statement in regards to certified mailing requirements:

Below is a list of all parties that the Sheriff needs to mail certified mail to; to include all creditors, debtors, and owners per Florida Statute 56.21 and 56.27(4):

Then include the following that is applicable:

i. Attorney of record of the judgment debtor(s) name and addresses.

≈ or ≈

If the judgment debtor(s) does not have an attorney of record then provide the judgment debtor(s) name and last known address.

ii. Attorneys of record of all judgment creditors and other lienholders who have acquired a lien as provided in s. 55.10(1) and (2), s. 55.202, s. 55.204(3), or s. 695.01, and whose liens have not lapsed at the time of levy, at the address listed in the judgment lien certificate or other recorded liens, or, if amended, in any amendment thereto. **(List by name and address)**

≈ and/or ≈

All judgment creditors and other lienholders who do not have an attorney of record, who have acquired a lien as provided in s. 55.10(1) and (2), s. 55.202, s. 55.204(3), or s. 695.01, and whose liens have not lapsed at the time of levy, at the address listed in the judgment lien certificate or other recorded liens, or, if amended, in any amendment thereto. **(List by name and address)**

iii. All secured creditors who have filed financing statements as provided in part V of chapter 679 in the name of the judgment debtor reflecting a security interest in property of the kind to be sold at the execution sale at the address listed in the financing statement, or, if amended, in any amendment to the financing statement. **(List by name and address)**

iv. Any Co-Owner(s) if not included as a debtor (defendant). **(List by name and address)**

v. Each person holding a lien against the personal property as disclosed by the affidavit. (Reference Paragraph #6c). **(List by name and address)**

vi. And any other individuals and addresses pursuant to statute. **(List by name and address)**

i. Per Florida Statute 56.27(1) include the following statement:

I understand unless a directed Court Order to the Sheriff is received prior to the Sheriff's Sale, all monies received through levy or sale will be paid as prescribed in 56.27, Florida Statutes; to the Sheriff for COSTS; the Levying Creditor in the amount of \$500.00 as LIQUIDATED EXPENSES; and the PRIORITY LEINHOLDER(S) under 55.202, 55.204(3); or 55.208(2), Florida Statutes as set forth in this Affidavit required by subsection (4), or his or her attorney, in satisfaction of the judgment lien(s), if the judgment lien(s) have not lapsed at time of levy. The receipt of the attorney shall be a release of the officer paying the money to him or her. If the name of more than one attorney appears in the court file, I have provided to the Sheriff, the name and the address of either the attorney who originally commenced the action or who made the original defense, unless the file show another attorney has been substituted.

j. Per Florida Statute 56.27(2)(b) include the following statement:

Pursuant to Florida Statute 56.27(2)(b), if the affidavit discloses that the property is also subject to any recorded mortgage, financing statement, tax warrant, or other lien, other than a judgment lien, which is junior in priority to the levying creditors judgment lien, any surplus from the sale of the property shall be paid over to the registry of the court which the execution issued for further proceedings to determine the priority in which such surplus shall be distributed among judgment lien holders, other liens, and the owner of the property sold.

k. Per Florida Statute 56.27(5) include the following statement:

I understand pursuant to 56.27(5), Florida Statutes, a Sheriff paying money received under an Execution in accordance with the information contained in this affidavit is not liable to anyone for damages arising from a wrongful levy.

l. Per Florida Statute 56.27 include one of the following statements:

I do **NOT** have any other levy in process and I believe in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

≈ or ≈

I **DO** have another levy is in process, and I believe in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

Note: In addition to the affidavit being notarized, it shall be signed and dated by the Attorney of Record or the Levying Creditor.

7. Provide a copy of the final judgment(s).
8. Provide the cost deposit check written out to the Jacksonville Sheriff's Office.
9. Provide a point of contact letter with a stamped self-addressed envelope.

B. Execution Real Property:

1. Per Florida Statute 30.231(3) provide one of the following for the writ of execution:
 - a. Original writ of execution
 - b. Certified copy of the writ or
 - c. Electronic copy of the writ, which was signed and certified by the Clerk of Court
2. The writ of execution will be in the format as prescribed by the Florida Rules of Civil Procedure (Form 1.914), and will include wording to comply with Florida Statute 55.03.

Note: Per Florida Statute 55.03 (2) and 55.03(3) the interest rates awarded will go through the end of the year that it was awarded and then it is adjusted annually to the rate set by the Chief Financial Officer. Effective July 1, 2011(CH 2011-169).

Writ Format for Judgments prior to 12-31-2011:

YOU ARE HEREBY COMMANDED to levy on the goods and chattels, lands and tenements of (**Debtor**), in the judgment sum of (**\$**), with legal interest at the rate of (**%**) a year, from (Month-Day-Year) through the end of 2011, and thereafter shall bear interest at the rate set by the Chief Financial Officer of the State of Florida, and as governed by Florida Statute 55.03, until paid and that you have this before said Court when satisfied.

Example: YOU ARE HEREBY COMMANDED to levy on the goods and chattels, lands and tenements of (**Debtor**), in the judgment sum of (**\$**), with legal interest at the rate of **11%** a year, from **November 09, 2008** through **12-31-2011**, and thereafter

shall bear interest at the rate set by the Chief Financial Officer of the State of Florida, and as governed by Florida Statute 55.03, until paid and that you have this before said Court when satisfied.

Format for Judgments after 01-01-2012:

YOU ARE HEREBY COMMANDED to levy on the goods and chattels, lands and tenements of (**Debtor**), in the judgment sum of (**\$**), with legal interest at the rate of (**%**) a year, from (**Month-Day-Year**) through the end of (Same year as listed previously), and thereafter shall bear interest at the rate set by the Chief Financial Officer of the State of Florida, and as governed by Florida Statute 55.03, until paid and that you have this before said Court when satisfied.

Example: YOU ARE HEREBY COMMANDED to levy on the goods and chattels, lands and tenements of (**Debtor**), in the judgment sum of (**\$**), with legal interest at the rate of **4.75%** a year, from **November 09, 2012** through the end of **12-31-2012**, and thereafter shall bear interest at the rate set by the Chief Financial Officer of the State of Florida, and as governed by Florida Statute 55.03, until paid and that you have this before said Court when satisfied.

3. Specific and complete levy instructions per Florida Statute 30.30 to include the following:

- a. Payment statement
- b. Balance owed
- c. Exact legal description and physical address, if applicable
- d. Cost deposit statement
- e. Harmless statement
- f. Call or write for an exemplar, if needed

4. A most current copy of the warranty deed or quitclaim deed **certified by the clerk of court**.

5. Creditors Affidavit that is not limited to but shall include one of the following statements:

- a. In accordance with Florida Statutes 56.27(4)(a) I have reviewed the Official Records of the **Clay County Clerk of Court** and all the information contained in this Affidavit including a disclosure of all judgment liens, mortgages, financing statements,

tax warrants, and other liens against the described real property, based on my review or title search is true and correct.

≈ or ≈

In accordance with Florida Statutes 56.27(4)(a), I have performed or reviewed a **title search** on the real property described in Sheriff's Instructions for Levy, and all the information contained in this Affidavit including a disclosure of all judgment liens, mortgages, financing statements, tax warrants, and other liens against the described real property, based on my review or title search is true and correct.

b. Per Florida Statute 56.27(4)(a) include the following statement:

I have listed each judgment lien found recorded on each parcel of real property in the **Official Records of Clay County Clerk of Court** described in my levy instructions **starting with the most senior and ending with the most junior in numeric order.**

≈ or ≈

I have listed each judgment lien found recorded on each parcel of real property in the **title search** described in my levy instructions **starting with the most senior and ending with the most junior in numeric order.**

All judgment liens to include your own (even if there is only your lien) must be listed and shall include the following:

- i. The Case Style
- ii. Case Number
- iii. Docket #
- iv. Date and time of filing of each judgment lien
- v. Judgment Date
- vi. Judgment Amount
- vii. Interest Rate

Note: Do NOT use see attachment(s) or enclosure(s) in your affidavit or it will be returned. You must be specific in identifying which judgment lien is senior, then who is next in seniority, etc...the Sheriff cannot determine or assume seniority, you must make your list absolutely clear.

c. Per Florida Statute 56.27(4)(a) include one of the following statements:

I have found other liens (recorded mortgage(s), financing statement, tax warrant, or other lien other than a judgment lien) and listed them by name as follows:

≈ or ≈

I found **NO** other liens (recorded mortgage(s), financing statement, tax warrant, or other lien other than a judgment lien).

d. If the defendant's name on the warranty deed or quit claim is different from the writ of execution, include a same name paragraph.

e. Per Florida Statute 56.21 include one of the following statements:

The defendant is **NOT** represented by an attorney in this case.

≈ or ≈

The defendant is represented by John Doe of Doe & Doe Attorneys at Law.

f. Per Florida Statute 222.01 include the following statement:

I have made an inquiry of the Public Records of the Clerk of the Circuit Court of Duval County, Florida, and found **NO** claim filed by the named Judgment Debtor (Defendant)(s) or any other person exempting the described real property from forced sale pursuant to Florida Statutes 222.01.

g. Per Florida Statute 56.21 and 56.27(4) include the following statement in regards to certified mailing requirements:

Below is a list of all parties that the Sheriff needs to mail certified mail to; to include all creditors, debtors, and owners Per Florida Statute 56.21 and 56.27(4):

Then include the following that is applicable:

i. Attorney of record of the judgment debtor(s) name and address.

≈ or ≈

If the judgment debtor(s) does not have an attorney of record then provide the judgment debtor(s) name and last known address.

ii. Attorneys of record of all judgment creditors and other lienholders, who have acquired a lien as provided in s. 55.10(1) and (2), s. 55.202, s. 55.204(3), or s. 695.01, and whose liens have not lapsed at the time of levy, at the address

listed in the judgment lien certificate or other recorded liens, or, if amended, in any amendment thereto. **(List by name and address)**

≈ or ≈

All judgment creditors and other lienholders who do not have an attorney of record, who have acquired a lien as provided in s. 55.10(1) and (2), s. 55.202, s. 55.204(3), or s. 695.01, and whose liens have not lapsed at the time of levy, at the address listed in the judgment lien certificate or other recorded liens, or, if amended, in any amendment thereto. **(List by name and address)**

iii. All secured creditors who have filed financing statements as provided in part V of chapter 679 in the name of the judgment debtor reflecting a security interest in property of the kind to be sold at the execution sale at the address listed in the financing statement, or, if amended, in any amendment to the financing statement. **(List by name and address)**

iv. Each other party holding a mortgage or other lien (recorded mortgage(s), financing statement, tax warrant, or other lien other than a judgment lien) against the real property as disclosed by the affidavit. (Reference paragraph #5c). **(List by name and address)**

v. The property owner, if not included as a debtor **(List by name and address)**

vi. And any other individuals and addresses pursuant to statute. **(List by name and address)**

h. Per Florida Statute 56.27(1) include the following statement:

I understand unless a Directed Court Order to the Sheriff is received prior to the Sheriff's Sale, all monies received through levy or sale will be paid as prescribed in Florida Statutes 56.27(1); to the Sheriff for COSTS; the Levying Creditor in the amount of \$500.00 as LIQUIDATED EXPENSES; and the PRIORITY LEINHOLDER(S) under Florida Statutes 55.10(1) and (2), Florida Statutes 55.202, 55.204(3); or Florida Statutes 55.208(2), as set forth in this Affidavit required by subsection (4), or his or her attorney, in satisfaction of the judgment lien(s), if the judgment lien(s) have not lapsed at time of levy. If the name of more than one attorney appears in the court file, I have provided to the Sheriff, the name and the

address of either the attorney who originally commenced the action or who made the original defense, unless the file show another attorney has been substituted.

i. Per Florida Statute 56.27(2)(b), include the following statement:

Pursuant to Florida Statute 56.27(2)(b), if the affidavit discloses that the property is also subject to any recorded mortgage, financing statement, tax warrant, or other lien, other than a judgment lien, which is junior in priority to the levying creditors judgment lien, any surplus from the sale of the property shall be paid over to the registry of the court which the execution issued for further proceedings to determine the priority in which such surplus shall be distributed among judgment lien holders, other liens, and the owner of the property sold.

j. Per Florida Statute 56.27(5), include the following statement:

I understand pursuant to 56.27(5), Florida Statutes, a Sheriff paying money received under an Execution in accordance with the information contained in this affidavit is not liable to anyone for damages arising from a wrongful levy.

k. Per Florida Statute 56.27 include one of the following statements:

I do **NOT** have any other levy in process and I believe in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

≈ or ≈

I **DO** have another levy is in process and I believe in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

Note: The affidavit needs to be signed and dated by the Attorney of Record or the Levying Creditor.

6. Provide a copy of the final judgment(s).

7. Provide a check written out to the Clay County Sheriff's Office in the amount determined by the Civil Section Supervisor for the cost deposit.

- a. Please call ahead of sending the packet to the Sheriff's Office so the Enforceable Writs Officer can advise you on what the cost deposit may be. In real property cases the cost deposit is dependent on the size of the advertisement.
8. Provide a point of contact letter with a stamped self-addressed envelope.

C. Replevin Requirements

1. Per Florida Statute 30.231(3) provide one of the following for the writ of replevin:
 - a. **Original** writ of replevin
 - b. **Certified copy** of the writ or
 - c. **Electronic copy** of the writ, which was signed and certified by the Clerk of Court
2. Pursuant to Florida Statute 30.231 provide sufficient copies for service for each defendant listed.
3. Pursuant to Florida Statute 30.30(1)(a) provide levy instructions if the property is not properly described by VIN or serial number in the body of the writ. Call or write for an exemplar, if needed.
4. A letter containing the following if the property is a vehicle, vessel, etc:
 - a. A **local** wrecker service and **local** contact phone number that can respond within an hour
 - b. Pursuant to Florida Statute 30.231(3) provide all addresses of where the property to be replevied can be located
 - c. A demand statement, if needed
 - d. A point of contact with telephone number
5. Pursuant to Florida Statute 30.231(1) a Sheriff's fee of \$90.00 is required to replevy the personal property and to serve a defendant. Prejudgment Writ of Replevins with the Summons is \$130.00. Each additional summons served is \$40.00.

Note: Do not forget to include with the summons the compliant (petition) when you are requesting a summons to be served with a prejudgment writ of replevin.
6. Large inventory replevins will require a reasonable cost deposit to cover stand by time, man power, etc... the cost deposit will be determined by the Civil Section Supervisors.

Note: If you have questions about the possible cost deposit requirements please contact the Civil Section Supervisor prior to sending the packet to the Sheriff.