

New Road Map for Proceedings Supplementary in Florida

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Florida's Proceedings Supplementary Statute (Fla. Stat. 56.29) provides judgment creditors a wide range of collection options. Over the years, courts inconsistently applied provisions of the statute, resulting in widespread confusion among courts and practitioners.

On March 9, Gov. Rick Scott signed into law SB 1042, which amends the statute to provide uniformity and clarity. These amendments, which become effective July 1, include:

- Clarified uniform procedure for commencing proceedings supplementary,
- Requirements that third parties raise factual and legal defenses,
- Authority for court sanctions if defenses and claims are raised for purpose of delay,
- Clearer discovery provisions and
- Requirements that third-party claims in proceedings supplementary be asserted in a supplemental complaint.

The process for proceedings supplementary under the amended law includes:

Step 1: Confirm judgment creditor holds an unsatisfied judgment

Proceedings supplementary are available to holders of an unsatisfied Florida judgment and/or a judgment lien. Foreign judgments must first be registered, domesticated, or otherwise converted into a Florida judgment.

Step 2: Cause clerk of court to issue a writ of execution

Step 3: Initiate proceedings supplementary

To initiate proceedings supplementary, the judgment creditor must file in the case from which the judgment was issued or recognized, a motion and an affidavit containing inter alia the name of the judgment creditor and a statement that the judgment creditor holds the unsatisfied judgment. The motion must describe the non-exempt property and/or debt obligation the judgment creditor seeks to execute on and identify the person in possession or control of the property, or whomever owes the obligation.

Step 4: Court shall issue a notice to appear

On filing the motion and affidavit, the judgment creditor is entitled to proceedings supplementary and may implead the third-parties identified in the motion. The court shall issue a "notice to appear" directing the third-parties file an affidavit explaining why the property and/or debt obligation should not be applied to the judgment. The affidavit must include all factual defenses. Legal defenses must also be filed. The notice to appear must be served per chapter 48, Florida Statutes.

Step 5: Right to examine the judgment debtor

After proceedings supplementary have been initiated, the judgment creditor may engage in discovery in aid of execution and file a motion for leave to examine the judgment debtor. On filing the motion, the court must order the judgment debtor to appear for examination at a time and place set by the court. The examination must occur in the county of the judgment debtor's residence or principal place of business.

Step 6: Proceedings supplementary complaint

The court may consider claims relating to the judgment debtor's property under chapter 726 and enter orders or judgments against transferees. The judgment creditor must make these claims in a supplemental complaint, to be served on the impleaded third-parties pursuant to the Rules of Civil Procedure. The clerk will docket the supplemental proceeding under the same case as the original action and assign a separate supplemental proceeding number.

Step 7: Court may order execution levy and sale of judgment debtor's property to satisfy the judgment

The court may order that any of the judgment debtor's property, not exempt from execution, or any property or debt due to the judgment debtor, in the possession or control of any person subject to the notice to appear, be levied upon and sold to satisfy the judgment.

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