

First Supplement to Memorandum 80-33

Subject: Study D-300 - Enforcement of Judgments (Execution Lien on Collected Debts)

In the course of preparing Memorandum 80-33 concerning general execution provisions, the staff came across an area where we believe some improvement can be made. One change proposed in the tentative recommendation is to collect rather than sell chattel paper, accounts receivable, general intangibles, judgments owing the judgment debtor, and certain negotiable instruments, unless the judgment creditor obtains a court order permitting sale. This recommendation is intended to avoid especially sacrificial sales and avoid a windfall to the purchaser of the property who is able to successfully collect on the obligation in an amount far above the price paid. The problem is that the lien of execution runs for only one year from the date the writ was issued so that the judgment creditor would only be able to collect amounts falling due on the obligation levied upon for up to a year, even though substantial amounts remain due. Of course, the creditor could replevy on the property after the lien expires, but an intervening creditor or an assignment by the judgment debtor might render the replevy ineffective. It is not clear that the judgment creditor could replevy on the obligation while the first execution lien is in effect.

Accordingly, the staff recommends that a provision be added permitting the judgment creditor to replevy on the obligation by delivery of a writ to the levying officer before the prior lien expires. The priority of the replevy would relate back to the commencement of the first lien on the obligation, thereby cutting off any intervening creditors or purported assignees. This result is consistent with the general provisions in the tentative recommendation concerning relation back. This procedure involves only the expenditure of the minimal fees for issuance of a writ and for levy (which occurs when the writ is delivered with instructions to the levying officer).

An alternative would be to revise the proposed section favoring collection over the sale of obligations so that property would be sold unless the judgment debtor obtained a court order requiring collection.

As a condition of this order, the judgment debtor could be required to assign the obligation to the judgment creditor for collection in the amount of the judgment debt remaining unpaid. This approach might result in more sacrificial sales, however, since some debtors might neglect to obtain a court order prohibiting sale out of ignorance, delay, or lack of resources.

A third approach would be to extend the duration of the execution lien in case of a collection and not to require any relevy or other renewal procedure at all. In the past, the Commission has discussed the idea of providing for a 10- or 20-year writ, rather than requiring frequent issuance and returns. However, our discussions with levying officers about this proposal reveals that they would oppose this suggestion because of the amount of paperwork and file-keeping involved. There is also some benefit in requiring a periodic accounting by way of an application for a writ of execution and the levying officer's return of the writ stating amounts collected.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel