

FORM SUMMARY

Name of Form: Execution Against Property

Form Number: GF-115

Statutory Reference: Wis. Stats, §815.05

Benchbook Reference: Civil, Section

Purpose of Form: Court order directing the sheriff to seize property of a debtor in order to satisfy a judgment

Who Completes It: Clerk of court.

Who Signs It: Clerk of Court. **COURT SEAL.**

Distribution of Form: Original to sheriff to be returned to court by sheriff indicating what the sheriff did or did not seize

Accompanying Forms: Generally none.

New Form/Modification: Modified; last update 01/07.

Modifications: Delete "COURT SEAL". It is now programmed to be applied.

Comments: There are three general types of orders to sheriffs directing the sheriff to take some action against a debtor's property: Attachment; Execution; and Replevin.

- Writ of attachment (§811.02): Order directing sheriff to seize and hold property pending execution because it is believed the debtor is concealing property or preparing to remove it from the jurisdiction with the intent to defraud the creditors. RMC has not created a writ of attachment form because such a writ is rarely used, requires significant due process protections for the debtor (because they are usually pre-judgment), and are usually quite unique to the particular situation.
- Execution against property (a/k/a Writ of Execution or Writ of Assistance) (§815.05, §815.11): The order to the sheriff directing the sheriff to seize property, sell it, and deliver the proceeds to the creditor. There is no requirement that the execution specify certain items of property, but sometimes creditors will identify specific items of property on which the sheriff should execute.
- Writ of Replevin: (§§810.03, 810.14): The order to the sheriff directing the sheriff to seize specific items of property and return that property to the creditor, who then sells the property in a reasonably commercial manner to satisfy a judgment.

Section 815.05, Wisconsin Statutes provides that executions can only be issued out of the county where the:

- * judgment was originally granted.

- * a certified copy of the judgment has been filed; or,
- * a transcript of the municipal judge's judgment has been filed.

RMC believes a "certified copy of the judgment" is NOT a "transcript of judgment." The clerk of court in the county where a "transcript of judgment" was filed does not have the jurisdiction to issue such an execution (See *Wilson v. Craite*, 60 Wis. 2d 350, 210 N.W.2d 700 (1973)).

If a judgment is granted in one county and a transcript of that judgment has been filed in a different county where a debtor's property is located, the creditor must obtain an execution for that property *from the county where the original judgment was filed*. When this occurs, the clerk of court may use this form but in the direction to the Sheriff, the name of the county to which the execution is issued should be entered.

As an alternative to the above procedure, Wis. Stats. §815.05, does permit executions to be issued in counties where a "certified copy of the judgment" is filed. If a creditor wishes to file a "certified copy of the judgment" in the new county, the creditor may do so. The clerk in the new county would be required to create a civil case file, charging the standard case filing fee, plus the docket fee. If the creditor goes through this process, the clerk of the new county can issue an execution.

About this Form:

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.