

REBA Title Standard No. 20

LEVY OF EXECUTION BY SALE

A title based on a levy of execution is not on that account defective if title into the judgment debtor is acceptable, and:

- A. (1) there was compliance with the procedural requirements of M.G.L. c. 236, particularly with respect to the notice requirements, which may be established by detailed recitations
- (a) in the sheriff's deed,
 - (b) in the sheriff's return or
 - (c) in an affidavit as discussed in Comment No. 3 below;
- (2) more than one year has passed without evidence of redemption or a claim of redemption by the debtor appearing of record within such one-year period;
- and
- (3) notice by personal service or mail has been given to the record owner and all junior creditors and other junior interest holders of record as of the date of the sale and the identification of the interested parties given such notice is recited in
- (a) the sheriff's deed,
 - (b) in the sheriff's return or
 - (c) in a separate affidavit as discussed in Comment No. 3 below;
- or
- B. more than 21 years have passed since the recording of the sheriff's deed and the record discloses no evidence of any action to redeem or set aside the conveyance;
- or
- C. there is of record a judicial decree confirming the validity of the sale under M.G.L. c. 237 or otherwise confirming the title derived under the sale.

Comment

1. *The procedural requirements of M.G.L. c. 236 include:*
- (a) *a sale by public auction to the highest bidder (§27);*
 - (b) *an officer's return (§27);*
 - (c) *a sheriff's deed recorded within three months after the sale, if there was any intervening conveyance by the debtor (§27);*
 - (d) *written notice of the time and place of sale (i) delivered by the officer to the debtor 30 days at least prior to sale, (ii) posted in a*

public place in the town where the land lies and two adjoining towns in the same county, and (iii) published once in each of three successive weeks, the first not less than 21 days prior to sale in a newspaper published in the town where the land lies (§§ 28 and 44); (e) the sheriff's sale occurring within six years of the recording or filing of the execution or any bringing forward of the same (§49A and c. 223, §114A).

2. *As to the debtor's one-year right of redemption and the requirements therefor, see M.G.L. c. 236, §33. See M.G.L. c. 236, § 47 concerning a levy on land standing in the name of another person.*

3. *If not otherwise established by specific recitations in the sheriff's deed or the sheriff's return, evidence of compliance with the procedural and notice requirements may be established by (A) an affidavit by the sheriff reciting any additional details of the sale procedure not contained in the sheriff's deed or return or (B) an affidavit by the creditor's attorney of record reciting any such additional details and attaching copies (certified to be true and accurate by such attorney) of any documents necessary to support such details, such as notices to junior interest holders or the "tear sheets" of the published notices showing dates of publication, in either case certified under the provisions of M.G.L. c.183, §5B.*

4. *With respect to Registered Land, note that the provisions of this title standard do not apply. Under Land Court Guideline No. 46 (May 1, 2000 edition), Sheriff's Deeds are considered "notation" deeds and are to be noted on the debtor's certificate of title but no subsequent certificate of title may be issued to the Sheriff's sale purchaser except by Order of Court based upon a petition, the form for which is provided immediately after the Guideline.*

Caveat

1. *The mere recitation of compliance with the statutory procedural requirements in the sheriff's deed, in place of a detailed description of the actions taken by the sheriff, is not sufficient to establish compliance for purposes of reliance on Paragraph A of this Standard.*

2. *With respect to the requirement of providing notice to junior creditors and other interest holders, see Keller v Teschke 38 Mass.App.Ct. 627, 650 N.E.2d 1279 (1995) and Bahnan v PHNB Realty, Inc., 48 Mass.App.Ct. 909, 719 N.E.2d 518 (1999), rev. den. 430 Mass. 1115, 724 N.E.2d 709 (2000). Neither the legislature nor the courts have established a requisite period of notice to be provided to junior interest holders prior to the scheduled sale nor a date after which new parties in interest need not be noticed. However, based on the aforementioned cases, it is reasonable to proceed on the basis that at least the same period of notice provided to the debtor/owner (30 days at least prior to the sale) should be provided to junior interest holders and that only junior interest holders of record as of that date would be entitled to such notice.*

3. *M.G.L. c. 236, § 29 only permits adjournments of a sheriff's sale for not more than seven days "and so from time to time until the sale is completed."*

Adopted May 3, 1976

Amended October 18, 1979 (Added the former (3)(b))

Amended May 4, 1994 (amended (1))

Amended May 15, 2000 (Added requirement for notice by personal service or mail and rewrote portions of the Standard.)

Amended May 5, 2009 (rewriting paragraphs A(1) and C, rewriting the Comments and Caveats).

REBA Title Standard No. 20



© Real Estate Bar Association for Massachusetts
(05-5-09)