§2203. Order to seize and sell

1. Execution of support liens. The department may issue an order to seize and sell to execute a support lien established under former Title 19, section 503 or 503-A or section 2357 or to enforce and collect any money judgment assessed under chapter 51, chapter 53, chapter 55, chapter 63 or this chapter. An order to seize and sell has the same effect as a writ of execution issued by the District Court or the Superior Court.
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

2. Issuance of order. An order to seize and sell is an order, under official seal of the department, directed to a county sheriff or a levying officer authorized by law to enforce a District Court or Superior Court judgment. The order must command the recipient of the order to seize and sell specific nonexempt real and personal property of an obligor to satisfy the support lien upon which the order is based. The department must know or have reason to believe the obligor has a substantial ownership interest in the property identified in the order. Before issuing the order, the department must search the records of the applicable registry of deeds for real property and the records of the Secretary of State for personal property to determine if there are other persons who have an ownership interest in the property.
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

3. Content of order. An order to seize and sell must be signed by the commissioner or the commissioner's designee. The order must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, plus fees and costs, if any. The order must identify the specific property that is the subject of the order. The order must include notice that tells the obligor and other persons who are known to have an ownership interest in the property how to contest the seizure and sale of the property, including notice of the right to an administrative hearing within 5 business days. The order must list the type and value of property that is exempt as provided in subsection 15.
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

4. Order limited. The county sheriff or levying officer may not seize property not specifically identified in the order.
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

5. Sheriff or levying officer. An order to seize and sell may be sent by the department to a county sheriff or levying officer. Upon receipt of the order, the sheriff or levying officer shall proceed to execute the order in the same manner as prescribed for execution of a judgment. A sheriff or levying officer shall return the order, along with any funds collected, to the department within 90 days of the receipt of the order. Funds resulting from execution of the order must first be applied to the sheriff's or levying officer's costs, then to any superior liens and then to the support lien or other money obligation and any inferior liens of which the department has notice. Any amounts in excess of this distribution must be paid to the obligor. If the order is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.
[PL 2009, c. 290, §24 (AMD).]

6. Right to hearing. At least 20 calendar days before the sale, the department shall serve a copy of the order on the obligor and all other persons that the department knows have an ownership interest in the property identified in the order. Service of an order under this subsection must be made in the manner provided for service of summons by the Maine Rules of Civil Procedure, Rule 4. For purposes of this subsection, this service must be deemed to be an action pursuant to Chapter XIII of the Maine Rules of Civil Procedure. Personal service within the State of a copy of the order may be made by an authorized representative of the commissioner. The obligor and any other persons who claim an ownership interest in the property seized under an order to seize and sell have a right to an administrative hearing to contest the seizure and sale of the property and to establish the value of their relative interest in the property. A request for a hearing must be in writing and must be received by the

department within 10 calendar days of service of a copy of the order. Upon receiving a request for a hearing, the department shall notify all persons who the department has reason to believe have an ownership interest in the property of the time, place and nature of the hearing.

A. Anyone requesting a hearing has the right to a preliminary hearing within 5 business days of the hearing request. At the preliminary hearing, if the hearing officer determines that there is reasonable ground to believe the seizure was lawful and that the obligor owes a support debt that could be satisfied in whole or in part by nonexempt property that has been seized, the hearing officer shall require the seizure to remain in force and schedule a final hearing, allowing all parties reasonable time to collect evidence and prepare for the final hearing. If the hearing officer determines that the seizure was not lawful or that the obligor does not owe a support debt that could be satisfied in whole or in part by nonexempt property that has been seized, the hearing officer shall declare the order to seize and sell void. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

B. The department shall notify any person who the department has reason to believe has an ownership interest in the seized property of the time and place of the final hearing. At the final hearing, the hearing officer shall determine:

(1) Whether the obligor owes a support debt;

(2) Whether the support debt could be satisfied in whole or in part by the property seized;

(3) The percentage share of ownership of all persons claiming an ownership interest in the property;

(4) The amount of the debtor's interest in the property that is exempt; and

(5) The value of the interest in the property owned by nonobligor parties with an interest superior to that of the department. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

[PL 2009, c. 290, §25 (AMD).]

7. Commercially reasonable sale. The sheriff or levying officer may sell the property seized as a unit or in parcels and at any time and place and on any terms not otherwise prohibited by this section, but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. The property may not be sold for less than the debtor's interest in the property that is exempt. The property may not be sold for less than the full value of the interest in the property owned by the nonobligor parties with an interest superior to that of the department. The department reserves the right to reject any and all bids.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

8. Notice of sale. Within 30 days of receiving notice of a sale from the county sheriff or levying officer, the department shall send by regular mail an accounting and proposed distribution of the net proceeds of the sale to the obligor, all joint owners of the property sold and any known lienholders with an interest in the property. The accounting and proposed distribution must include notice of the right to challenge the proposed distribution at an administrative hearing within 30 days. The department may not distribute the proceeds of the sale until the appeal period has run and all appeals have been decided.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

9. Release. Upon receiving payment in full of the order amount plus fees and costs, if any, the department shall release the order to seize and sell. Upon receiving partial payment of the order amount or if the department determines that a release or partial release of the order will facilitate the collection of the unpaid amount, fees and costs, the department may release or may partially release the order to seize and sell. The department shall release the order if it determines the order is unenforceable.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

10. Right to redeem. An obligor or other person or entity having an interest in real or personal property seized under an order to seize and sell at any time prior to the sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the county sheriff or levying officer serving the order. Upon payment in full, the property must be restored to the obligor or other person or entity having an interest in that property and all proceedings on the order must cease.
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

11. Right to redeem after sale. An obligor or other person or entity having an interest in real property seized and sold by a county sheriff or levying officer pursuant to an order to seize and sell may, within 240 days after the sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser, plus interest at the statutory interest rate payable on judgments recovered in the District Court and the Superior Court.
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

12. Release not a bar to other action. At any time after seizure and sale of property under an order to seize and sell, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is ensured or if the release will facilitate collection of the support lien or money obligation. The release or return of the property does not prevent future action to collect the order amount from that property or other property.
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

13. Statute of limitations. The department may issue an order to seize and sell to collect a support lien or other money obligation under chapter 51, chapter 53, chapter 55, chapter 63 or this chapter at any time within the statutory limitation period for enforcing and collecting child support amounts.
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

14. Additional remedies. The use of an order to seize and sell is not exclusive and the department may use any other remedy provided by law for the collection of child support.
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

15. Exempt property. The following property is exempt from seizure and sale, except to the extent that it has been fraudulently conveyed by the obligor:

A. The obligor's aggregate interest, not to exceed $47,500 in value, in real or personal property that the obligor uses as a residence; [PL 2015, c. 212, §2 (AMD).]

B. The obligor's interest, not to exceed $5,000 in value, in one motor vehicle; [PL 2015, c. 212, §2 (AMD).]

C. The obligor's interest, not to exceed $200 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for the personal, family or household use of the obligor or a dependent of the obligor; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

D. The obligor's aggregate interest, not to exceed $5,000 in value, in any implements, professional books or tools of the trade of the obligor or the trade of a dependent of the obligor, including, but not limited to, power tools, materials and stock designed and procured by the obligor and necessary for carrying on the obligor's trade or business and intended to be used or wrought in that trade or business; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

E. The obligor's interest in the following items held primarily for the personal, family or household use of the obligor or a dependent of the obligor:

(1) One cooking stove;

(2) All furnaces or stoves used for heating; and

(3) All cooking and heating fuel not to exceed 10 cords of wood, 5 tons of coal or 1,000 gallons of petroleum products or the equivalent amount of another type of fuel; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

F. The obligor's interest in the following items held primarily for the personal, family or household use of the obligor or a dependent of the obligor:

(1) All food provisions, whether raised or purchased, reasonably necessary for 6 months;

(2) All seeds, fertilizers, feed and other material reasonably necessary to raise and harvest food through one growing season; and

(3) All tools and equipment reasonably necessary for raising and harvesting food; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

G. The obligor's interest in one of every type of farm implement reasonably necessary for the obligor to raise and harvest agricultural products commercially, including any personal property incidental to the maintenance and operation of the farm implements; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

H. The obligor's interest in one boat, not exceeding 5 tons burden, used by the debtor primarily for commercial fishing; and [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

I. Professionally prescribed health aids for the obligor or a dependent of the obligor. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

[PL 2015, c. 212, §2 (AMD).]

16. Repeal.

[PL 1997, c. 669, §4 (RP).]

SECTION HISTORY

PL 1995, c. 694, §B2 (NEW). PL 1995, c. 694, §E2 (AFF). PL 1997, c. 669, §4 (AMD). PL 2009, c. 290, §§24, 25 (AMD). PL 2015, c. 212, §2 (AMD).

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