

Table of Contents

CHAPTER 1. PRELIMINARY CONSIDERATIONS

I. INTRODUCTION

§ 1:1 Generally

II. LAWYER'S ROLE IN DEBT COLLECTION PROCESS

§ 1:2 Why lawyers should take collection cases
§ 1:3 Types of claims
§ 1:4 Secured versus unsecured debts
§ 1:5 Consumer versus commercial claims
§ 1:6 Commercial (business) claims
§ 1:7 Consumer (individual) claims
§ 1:8 —Difficulties in consumer claims
§ 1:9 ——Exemptions
§ 1:10 ——Difficulty in locating debtor
§ 1:11 ——Insufficient assets and income
§ 1:12 ——Consumer bankruptcies
§ 1:13 ——Business debts as consumer debts
§ 1:14 Attorney's functions
§ 1:15 Creditor's counsel
§ 1:16 Debtor's counsel

III. ACCEPTING COLLECTION CASES

§ 1:17 Initial contact with client
§ 1:18 Ethical considerations
§ 1:19 Attorney's legal and ethical obligation to decline meritless case
§ 1:20 Ethical standards
§ 1:21 Tort liability for pursuing meritless cases
§ 1:22 Malicious prosecution
§ 1:23 —Definition
§ 1:24 Abuse of process
§ 1:25 Improper motive not sufficient
§ 1:26 Sanctions exposure for "frivolous" or "dilatory" litigation tactics
§ 1:27 Trial court sanctions
§ 1:28 Certification requirement

ENFORCING JUDGMENTS

- § 1:29 Meaning of the certification
- § 1:30 Required signatures
- § 1:31 Failure to appear in court
- § 1:32 Appellate sanctions
- § 1:33 Attorney competence
- § 1:34 Handling matters beyond own expertise
- § 1:35 —Application to debt collection cases
- § 1:36 —General practice
- § 1:37 —Specialized knowledge
- § 1:38 Conflict of interest limitations
- § 1:39 —Arising from professional relationship with opposing party
- § 1:40 —Disclosure and written consents required
- § 1:41 —“Informed written consent”
- § 1:42 —Representation of multiple creditors against same debtor
- § 1:43 —Disclosure to clients and consent
- § 1:44 —Need for separate legal action
- § 1:45 —Creditor’s committee representation exception
- § 1:46 Special debtor-creditor ethical concerns
- § 1:47 —Improper delaying tactics
- § 1:48 —Prebankruptcy advice allowable
- § 1:49 “Unfair” consumer debt collection practices
- § 1:50 —Lending name to nonlawyers
- § 1:51 — —Form demand letters
- § 1:52 Attorney fee considerations
- § 1:53 Types of fee arrangements
- § 1:54 Contingency fee arrangements and routine collection cases
- § 1:55 Combination fees
- § 1:56 Hourly rates
- § 1:57 Ethical limitations on fees
- § 1:58 “Excessive” fees
- § 1:59 “Risk” factors in contingency fee cases may justify larger fee
 - § 1:60 —Gambling on outcome
 - § 1:61 “Illegal” fees
 - § 1:62 Fee splitting
 - § 1:63 —Client consent required
 - § 1:64 —Adequate records required
 - § 1:65 Role as fiduciary
 - § 1:66 Formalizing attorney-client relationship
 - § 1:67 Written letter of engagement
 - § 1:68 Fee arrangement formalities
 - § 1:69 Limited regulation of noncontingency fee agreements

TABLE OF CONTENTS

- § 1:70 —Contingency cases
- § 1:71 —Domestic relation matters
- § 1:72 —Plain English
- § 1:73 —Billing requirements
- § 1:74 —Statement of basis for calculation
- § 1:75 Payment of costs
- § 1:76 —Authority to incur expenses
- § 1:77 —Client's responsibility for payment
- § 1:78 —Advances from client
- § 1:79 Work to be performed
- § 1:80 —Scope of undertaking
- § 1:81 —Never guarantee results
- § 1:82 —Duration of undertaking
- § 1:83 —Withdrawal from employment
- § 1:84 ——Mandatory withdrawal
- § 1:85 ——Permissive withdrawal
- § 1:86 —Other permissible withdrawal
- § 1:87 Division of authority
- § 1:88 —Implied authority regarding procedural matters
- § 1:89 —No implied authority regarding "substantive" rights
- § 1:90 Form of agreement
- § 1:91 —Standardized agreements commonly used
- § 1:92 —Letter agreements

IV. EFFICIENT DEBT COLLECTION OFFICE PROCEDURES

- § 1:93 Need for efficient office procedures
- § 1:94 Using standardized forms
- § 1:95 Using paralegals and clerical staff
- § 1:96 Setting up and maintaining case files
- § 1:97 Single file system for routine cases
- § 1:98 File organization
 - § 1:99 —Chronological order
 - § 1:100 Supplemental file system as case "grows"
 - § 1:101 Bulky documents
 - § 1:102 Marking original file
 - § 1:103 Multiple file system in complex cases
 - § 1:104 —Categorized files
 - § 1:105 —Correspondence files
 - § 1:106 —Assets/lien files
 - § 1:107 —Pleadings files
 - § 1:108 —Discovery files
 - § 1:109 —Indexing the files
 - § 1:110 Implementing docket system

- § 1:111 Calendar time bars immediately
- § 1:112 Employ backup procedures
- § 1:113 Central control
- § 1:114 Procedures upon receipt of claims
- § 1:115 Collection efforts should begin promptly
- § 1:116 Prompt acknowledgment of file a must
- § 1:117 Initial call as important as acknowledgment to client
- § 1:118 Handling forwarded claims
- § 1:119 Reports to client/forwarder
- § 1:120 Electronic communication aids in prompt communication

V. FORMS

- § 1:121 Contingency fee agreement—Form 1-1
- § 1:122 Letter agreement for hourly rate fee—Form 1-2

CHAPTER 2. LIABILITY FOR UNFAIR COLLECTION PRACTICES

I. INTRODUCTION

- § 2:1 Generally
- § 2:2 Creditor's counsel
- § 2:3 Debtor's counsel

II. STATUTORY LIABILITY AND PROCEDURES

A. INTRODUCTION

- § 2:4 Generally

B. FEDERAL FAIR DEBT COLLECTION PRACTICES ACT

1. Introduction

- § 2:5 Generally

2. Scope of Federal FDCPA

- § 2:6 Generally
- § 2:7 “Consumer debts”
- § 2:8 —Inapplicable to business debts
- § 2:9 —Verbiage in document not dispositive
- § 2:10 —Inapplicable to child support judgments
- § 2:11 —Inapplicable to certain obligations arising from torts
- § 2:12 —Applicable to collection of residential back rent

TABLE OF CONTENTS

§ 2:13	Business and personal debts
§ 2:14	—Courts will determine based on testimony
§ 2:15	“Debt collectors”
§ 2:16	—Examples
§ 2:17	—Application to attorneys
§ 2:18	— —Regularity required
§ 2:19	—Application to creditors
§ 2:20	“Debt collectors”—Application to creditors—Debt collectors making any false or misleading representations are subject to Federal FDCPA
§ 2:21	“Debt collectors”—Application to creditors—Examples
§ 2:22	— —Misrepresentation that law firm is involved
§ 2:23	— —Creditors collecting other creditors’ debts subject to Federal FDCPA
§ 2:24	—Application to collection agencies
§ 2:25	— —Collection agency employees
§ 2:26	— —False and misleading practice
§ 2:27	Persons exempt from Federal FDCPA
§ 2:28	—Original or actual creditor
§ 2:29	—Creditor’s employees
§ 2:30	— —Contrast
§ 2:31	— —Former employees not exempt
§ 2:32	—Creditor’s subsidiary, affiliate, or other related entity
§ 2:33	—Government employees
§ 2:34	— —Local employees
§ 2:35	— —Private guarantee agencies not exempt
§ 2:36	—Process servers
§ 2:37	—Consumer credit counseling organization
§ 2:38	— —“For-profit” credit counseling services
§ 2:39	—Fiduciaries
§ 2:40	— —Trustee exercising power of sale
§ 2:41	—Debt servicers
§ 2:42	— —Application
§ 2:43	Consumer debts exempt from Federal FDCPA
§ 2:44	—Debts not in default when obtained
§ 2:45	— —Mortgage service companies
§ 2:46	Preemption of state law
3. Limitations on Debt Collectors’ Communications	
§ 2:47	Generally
§ 2:48	Communications with “consumers”
§ 2:49	—Scope of limitations
§ 2:50	— —Which “consumers”
§ 2:51	Which “communications”

- § 2:52 —No communication at inconvenient times or places
- § 2:53 ——Presumptively inconvenient times
- § 2:54 ——Waiver or modification of protection
- § 2:55 —Consumers represented by attorneys
- § 2:56 ——Exceptions
- § 2:57 ——Multiple debts
- § 2:58 ——Consumer's attorney fails to respond
- § 2:59 ——Waiver by attorney or consumer
- § 2:60 —Communication at consumer's workplace
- § 2:61 ——Waiver
- § 2:62 Communication with third parties
- § 2:63 —Generally prohibited
- § 2:64 ——Applicable to third party witnesses
- § 2:65 —Exception re-effecting postjudgment remedies
- § 2:66 —Exception re obtaining location information
- § 2:67 ——What constitutes "location information"
- § 2:68 ——Restrictions on nature of location information
- § 2:69 ——Identification
- § 2:70 ——No mention of consumer's debt
- § 2:71 ——No postcards
- § 2:72 ——No reference to debt collection
- § 2:73 —Number of communications limited
- § 2:74 ——No third party contacts if consumer represented by counsel
- § 2:75 —Exception re waiver by consumer
- § 2:76 —Exception re court permission

4. Prohibition on Harassment and Abuse

- § 2:77 Generally
- § 2:78 Scope; debtors and third parties protected
- § 2:79 "Least sophisticated consumer" standard
- § 2:80 —Dual purpose for "least sophisticated consumer" standard
- § 2:81 —Need to protect "least sophisticated consumer" may lead to class action
- § 2:82 Examples of harassment or abusive conduct
- § 2:83 —Threats or use of violence or other criminal means
- § 2:84 ——Implied threat
- § 2:85 —Obscene language
- § 2:86 —Publishing "deadbeat" lists
- § 2:87 —Advertising debt for sale to coerce payment
- § 2:88 —Telephone conduct
- § 2:89 ——Frequency of calls
- § 2:90 ——Automated dialers
- § 2:91 ——Robocalls Prerecorded messages

TABLE OF CONTENTS

§ 2:92	— —Deemed an “initial communication”
§ 2:93	— —Disclosure of caller’s identity
§ 2:94	— — —“Meaningful disclosure”
§ 2:95	— — —Use of “alias,” “pseudonym,” or “desk name”
§ 2:96	— — —Identification as “debt collector” mandatory
§ 2:97	— — —Subject to limitations regarding “location information” communications with third parties
§ 2:98	—Other abusive conduct may be prohibited
§ 2:99	—Nonabusive conduct
§ 2:100	— —Contacting wrong consumer
§ 2:101	— —Repeated mailing of demand letters
§ 2:102	— —Repeated mailing of nondemand letters

5. General Prohibition on False or Misleading Representations

§ 2:103	Generally
§ 2:104	Specifically proscribed conduct
§ 2:105	—False government or judicial affiliation
§ 2:106	—Misrepresentation regarding debt
§ 2:107	— —Exception
§ 2:108	— —Legal action
§ 2:109	— —Debt maturation
§ 2:110	— —Discharge
§ 2:111	— —Time-barred actions
§ 2:112	— —Mistaken collections
§ 2:113	—Misrepresenting collector’s compensation
§ 2:114	—Misrepresenting status as attorney
§ 2:115	— —Effect; form attorney letters prohibited
§ 2:116	—Misuse of attorney stationery
§ 2:117	—Misrepresenting status as attorney—Failure to review creditor files and collection letters also prohibited
§ 2:118	—Misrepresenting effect of nonpayment
§ 2:119	—Threatening unintended or unlawful action
§ 2:120	— —“Least sophisticated consumer” standard
§ 2:121	— —Inference of lack of intent
§ 2:122	— — —Lack of intent proven
§ 2:123	— — —Artificial deadlines
§ 2:124	—Misrepresenting effect of debt transfer
§ 2:125	— —Effect
§ 2:126	—False criminal accusations
§ 2:127	—Communicating false credit information
§ 2:128	—Distributing false writings
§ 2:129	— —Compare
§ 2:130	— —Simulated legal documents

- § 2:131 — —Falsely implying that documents are not legal process
- § 2:132 —Disclosing purpose of communications
- § 2:133 — —Subsequent communications
- § 2:134 — —“Locating communications” exception
- § 2:135 — —When first communication is oral
- § 2:136 —Misrepresenting account transfer
- § 2:137 —Using false business names
- § 2:138 — —Customary use of pseudonyms permissible
- § 2:139 — —Writing to acquire “location information”
- § 2:140 —Falsely implying association with credit reporting agency
- § 2:141 — —Improper names

6. Prohibition on Unfair or Unconscionable Practices

- § 2:142 Generally
- § 2:143 Collecting unauthorized amount
- § 2:144 —Effect; No illegal charges
- § 2:145 —No unauthorized collection fee
- § 2:146 —Reasonable collection fee allowed
- § 2:147 Misusing postdated checks
- § 2:148 —Accepting postdated checks
- § 2:149 —Soliciting postdated checks
- § 2:150 —Depositing postdated checks
- § 2:151 Payment for collect calls
- § 2:152 Nonjudicial repossession
- § 2:153 —Applicable to repossession agencies
- § 2:154 Mailed communications
- § 2:155 —Postcards prohibited
- § 2:156 —Collection-related language and symbols
- § 2:157 Intentionally misleading name on envelope is impermissible
- § 2:158 Time-barred collection suits
- § 2:159 —Compare
- § 2:160 Use of attorney form letters
- § 2:161 —Flat rate transactions
- § 2:162 — —Defense to flat rating

7. Prohibition on Furnishing Deceptive Forms

- § 2:163 Generally

8. Consumers' Validation, Verification, and Other Rights

- § 2:164 Generally

TABLE OF CONTENTS

§ 2:165	Right to validation notice
§ 2:166	—Purpose
§ 2:167	—Sufficiency of notice judged by “least sophisticated consumer” standard
§ 2:168	—Debtor cannot be misled
§ 2:169	—Effective communication; No contradictory language
§ 2:170	—Contradicting the 30-day dispute period
§ 2:171	—Inaccuracy of validation notice deemed deceptive
§ 2:172	—Even minor variation may be violative
§ 2:173	—Requiring dispute to be in writing may be an FDCPA violation
§ 2:174	—Exception; Oral notice with initial communication
§ 2:175	—Multiple debts
§ 2:176	—Multiple collectors
§ 2:177	—Applicable to formal legal actions
§ 2:178	—Summons and complaint no longer deemed to be initial communication
§ 2:179	—Applicable to formal legal actions—Exceptions
§ 2:180	—CPLR compliance assures personal jurisdiction
§ 2:181	Verification rights
§ 2:182	—What constitutes “verification”
§ 2:183	—Stay on debt collection activities pending verification
§ 2:184	—No stay on prenotice collection
§ 2:185	—Commencement of lawsuit or continuation of legal process within lawsuit
§ 2:186	Commencement of lawsuit prior to expiration of validation period may be a violation
§ 2:187	Verification rights—Effect of failure to dispute debt
§ 2:188	—No admission of liability
§ 2:189	—Damages for notice violations still recoverable
§ 2:190	Right to be left alone
§ 2:191	—Exceptions
§ 2:192	Right to be sued in convenient forum
§ 2:193	—Actions against real property
§ 2:194	—All other actions
§ 2:195	—Actions based on oral contracts
§ 2:196	—Actions to enforce judgment on debt
§ 2:197	—Consumer action for FDCPA violations
§ 2:198	Right to apply debt payments
9. Civil Liability for Violations	
§ 2:199	Generally
§ 2:200	Standing to sue

ENFORCING JUDGMENTS

- § 2:201 Concurrent state and federal court jurisdiction
- § 2:202 —Federal court actions for federal or state criminal law violations
- § 2:203 Statute of limitations
- § 2:204 Damages
- § 2:205 —Actual damages
- § 2:206 ——Definition
- § 2:207 ——Establishing emotional distress
- § 2:208 —Statutory damages
- § 2:209 ——Factors determining amount of statutory damages
- § 2:210 ——Multiple awards
- § 2:211 —Costs and attorney's fees
- § 2:212 ——Prevailing plaintiff
- § 2:213 ——Prevailing defendant
- § 2:214 ——Amount of fees awarded
- § 2:215 Class actions
- § 2:216 —Limits on liability to each named plaintiff
- § 2:217 —Limited liability to class
- § 2:218 ——Factors determining amount of recovery
- § 2:219 ——Per action or per violation limit
- § 2:220 Debt collectors' defenses to civil liability
- § 2:221 —Unintentional violations
- § 2:222 ——Mistake of law distinguished
- § 2:223 —Proof must be established by preponderance of evidence
- § 2:224 —Reliance on FTC advisory opinions
- § 2:225 ——Limited to formal opinions

10. Administrative Enforcement

- § 2:226 Generally
- § 2:227 FTC enforcement under FTC Act
- § 2:228 Check Investors enforcement action resolution
- § 2:229 FTC enforcement under FTC Act—Enforcement powers
 - § 2:230 —Office of credit practices
 - § 2:231 —FTC informal staff letters
 - § 2:232 —FTC staff commentary on Federal FDCPA
 - § 2:233 Enforcement by other federal agencies
 - § 2:234 —Which federal agencies
 - § 2:235 Trade regulations prohibited
 - § 2:236 —FTC "guides"

C. NEW YORK GENERAL BUSINESS LAW

1. Introduction

- § 2:237 Generally

TABLE OF CONTENTS

§ 2:238 Distinction between federal and state law

2. Scope of State FDCPA

§ 2:239 Generally

§ 2:240 Creditors included

§ 2:241 —Federal FDCPA

§ 2:242 “Consumer debt” defined

§ 2:243 —Business debts excluded

§ 2:244 Federal law preemption

3. Prohibited “Debt Collection” Practices

§ 2:245 Generally

§ 2:246 Prohibited practices

§ 2:247 —Simulation of government representative

§ 2:248 —Collection or attempt to collect unjust charges

§ 2:249 —Defaming debtor

§ 2:250 —Communication with debtor’s employer

§ 2:251 ——Exception

§ 2:252 —Disclosure when debt is disputed

§ 2:253 —Harassment

§ 2:254 —Threats

§ 2:255 —Espouse false rights

§ 2:256 —Simulate legal, judicial, or governmental authority

4. Enforcement and Liability

§ 2:257 Generally

§ 2:258 Violations

§ 2:259 —Actual damages

§ 2:260 No class actions

§ 2:261 Class actions permitted—Federal FDCPA

§ 2:262 Statute of limitations

§ 2:263 —Defamation

§ 2:264 —One-year statute

§ 2:265 Criminal liability

§ 2:266 —Separate offense for each violation

§ 2:267 —Party to bring action

D. NEW YORK CITY CONSUMER PROTECTION
LAW REGULATION 10

§ 2:268 Generally

§ 2:269 Debts covered

§ 2:270 Validation of debts

§ 2:271 Investigation of errors

§ 2:272 Unintentional violation

ENFORCING JUDGMENTS

§ 2:273 NYC Licensing of debt collection agencies or debt collection attorneys

E. FEDERAL TRADE COMMISSION ACT

§ 2:274 Generally

§ 2:275 No private right of action

§ 2:276 Interrelationship with Federal FDCPA

F. FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

§ 2:277 Generally

§ 2:278 Disposal of Consumer Report Information and Records

G. FEDERAL CIVIL RIGHTS ACT

§ 2:279 Generally

H. FEDERAL DEBT COLLECTION PROCEDURES ACT

§ 2:280 Generally

§ 2:281 Preemption of state law

§ 2:282 Nationwide enforcement

§ 2:283 Prejudgment remedies

§ 2:284 Postjudgment remedies

§ 2:285 Debtor's exemptions

III. TORT LIABILITY

A. INTRODUCTION

§ 2:286 Generally

§ 2:287 Mistake of the Law is not a "bona fide error" defense

B. EXTRA-LEGAL COLLECTION TORTS

§ 2:288 Generally

1. Intentional Infliction of Emotional Distress

§ 2:289 Generally

§ 2:290 Elements of prima facie case

§ 2:291 —Defendant's "extreme" or "outrageous" conduct

§ 2:292 ——Types of outrageous behavior

§ 2:293 ——Debt collectors' qualified privilege

§ 2:294 ——Outrageous practices destroy qualified privilege

TABLE OF CONTENTS

- § 2:295 — —Examples of unreasonable collection behavior
- § 2:296 — — —Rude behavior compared
- § 2:297 —Intent
- § 2:298 —Plaintiff's severe emotional distress

2. Defamation

- § 2:299 Generally
- § 2:300 Libel
- § 2:301 —“Libel per se”
- § 2:302 — —Distinguishing between libel and libel per se
- § 2:303 — —Examples of libel per se
- § 2:304 — — —Alleging debtor refuses to pay just debts
- § 2:305 — — —Charging criminal conduct
- § 2:306 — — —Charging character defect or noncriminal misconduct
- § 2:307 — — —Epithets and derogatory remarks
- § 2:308 —Defenses
- § 2:309 — —Truth
- § 2:310 — —Privilege
- § 2:311 — — —Statutory privileges
- § 2:312 —Damages
- § 2:313 — —General damages
- § 2:314 — —Special damages
- § 2:315 Slander
- § 2:316 —“Slander per se”
- § 2:317 Statutory liability

3. Interference With Employment Relationship

- § 2:318 Generally
- § 2:319 Elements of prima facie case
- § 2:320 Statutory action compared

4. Other Collection Torts

- § 2:321 Generally
- § 2:322 Trespass
- § 2:323 —Intent
- § 2:324 —Consent as defense
- § 2:325 Personal property conversion
- § 2:326 —Trespass to chattel compared
- § 2:327 —Elements of prima facie case
- § 2:328 —Right to possession as defense
- § 2:329 —Remedies

C. TORT LIABILITY FOR MISUSE OF LEGAL PROCESS

1. Introduction

§ 2:330 Generally

2. Malicious Prosecution

§ 2:331 Generally

§ 2:332 Elements of prima facie case

§ 2:333 —Favorable termination required

§ 2:334 —Lack of “probable cause”

§ 2:335 —“Malice”

§ 2:336 —Damages

§ 2:337 Statute of limitations

§ 2:338 —Civil litigation

§ 2:339 —Criminal matter

3. Abuse of Process

§ 2:340 Generally

§ 2:341 Elements of prima facie case

§ 2:342 Wrongful attachment

§ 2:343 —Abuse of process versus malicious prosecution

§ 2:344 —Underlying action prosecuted maliciously without probable cause

§ 2:345 —Improperly obtained attachment

§ 2:346 ——Wrongful use of attachment in properly instituted action

§ 2:347 —Statutory liability for wrongful attachment compared

4. Slander of Title

§ 2:348 Generally

§ 2:349 Privilege

§ 2:350 Abstracts of judgment

§ 2:351 —Exception

IV. CRIMINAL LIABILITY

A. INTRODUCTION

§ 2:352 Generally

B. STATE LAW

§ 2:353 Generally

§ 2:354 Unlawful collection practices

TABLE OF CONTENTS

- § 2:355 Coercion
- § 2:356 —Threats unlawfully inducing fear
- § 2:357 ——To commit unlawful injury
- § 2:358 ——Injury by third person
- § 2:359 ——To make criminal accusation
- § 2:360 ——Truth no defense
- § 2:361 ——To defame or expose
- § 2:362 ——Criminal record
- § 2:363 ——To expose a secret
- § 2:364 ——Type of secret
- § 2:365 ——Sending threatening letters
- § 2:366 ——Obtaining signature by threats
- § 2:367 ——Kidnapping for ransom
- § 2:368 Telephone offenses
- § 2:369 —Threats or obscene language
- § 2:370 ——“Obscene” defined
- § 2:371 Wiretapping and eavesdropping

C. FEDERAL LAW

- § 2:372 Generally
- § 2:373 Postal laws
- § 2:374 —Mail fraud
- § 2:375 —Defamatory or injurious matter on envelopes
- § 2:376 —Enforcement of postal laws
- § 2:377 Communications Act of 1934
- § 2:378 Civil rights law

V. REVISIONS TO TITLE 6 OF THE RULES OF THE CITY OF NEW YORK

- § 2:379 Revisions adopted in August 2024 but not yet effective
- § 2:380 Electronic Communications
- § 2:381 Records to be Maintained by Debt Collection Agency
- § 2:382 Additional Definitions added to Title 6 of the Rules of the City of New York

VI. FORMS

- § 2:383 Demand letter to guarantor of commercial debt—Form 2-1
- § 2:384 Consumer collection letter—Form 2-2
- § 2:385 Validation notice to debtor—Form 2-3
- § 2:386 Consumer summons—Form 2-4
- § 2:387 Consumer summons in Spanish language—Form 2-5

- § 2:388 Complaint against customer—Form 2–6
- § 2:389 Complaint and jury demand against debt collector—Form 2–7
- § 2:390 Answer to complaint by debt collector—Form 2–8
- § 2:391 Debt Collection Report: Record of Consumer Activity FORM 2–8

CHAPTER 3. PREJUDGMENT COLLECTION

I. EVALUATING CLAIMS

A. PRELIMINARY STEPS

1. Introduction

- § 3:1 Generally

2. Obtain Facts From Creditor

- § 3:2 Generally
- § 3:3 Copies of relevant documents
- § 3:4 Information regarding debtor
- § 3:5 —Individual debtor
- § 3:6 —Business debtor

3. Determine Type of Claim

- § 3:7 Generally
- § 3:8 Secured or unsecured
- § 3:9 Consumer or commercial

4. Ascertain Statute of Limitations

- § 3:10 Generally
- § 3:11 Residual statutory claim
- § 3:12 Contract claim
- § 3:13 Personal injury
- § 3:14 Malpractice
- § 3:15 Intentional torts

5. Tolling Statute of Limitations

- § 3:16 Generally
- § 3:17 Time for service of process, generally
- § 3:18 Time for service of process—When statute of limitations has been tolled by filing
- § 3:19 Exception
- § 3:20 Written waiver (extension) of statute of limitations

6. Evaluate Resident Status of Corporate Creditor

- § 3:21 Generally

TABLE OF CONTENTS

- § 3:22 Requirements of foreign corporations
- § 3:23 —Payment of taxes
- § 3:24 —Posting of undertaking
- § 3:25 Other non-residents as plaintiffs
- § 3:26 —Individuals and partnerships

B. IDENTIFY ALL LIABLE PARTIES

1. Introduction

- § 3:27 Generally
- 2. Debts Incurred by Business Entities

- § 3:28 Generally
- § 3:29 Sole proprietors
- § 3:30 —Generally, no formalities
- § 3:31 —Assumed business names
- § 3:32 ——Information required in certificate
- § 3:33 Partnerships
- § 3:34 —General partnerships
- § 3:35 ——General partners' unlimited personal liability
- § 3:36 ——Liability for debts incurred by partner
- § 3:37 ——Liability for partner's wrongdoing
- § 3:38 ——Creditors and other third parties not affected by agreement among partners
- § 3:39 ——Generally, no formalities
- § 3:40 ——Assumed business names
- § 3:41 Limited partnerships
- § 3:42 —Liability of limited partners engaged in management
- § 3:43 ——What constitutes "taking part in control" of business
- § 3:44 ——Formalities required
- § 3:45 ——Filing required
- § 3:46 Corporations
- § 3:47 —Range of powers
- § 3:48 —Management and control
- § 3:49 —Formalities; Filings required
- § 3:50 —Liability for corporate debts
- § 3:51 ——Alter ego liability
- § 3:52 ——Requirements to pierce corporate veil
- § 3:53 —Factors required to prove dominion exists
- § 3:54 —Liability for corporate debts—Application
- § 3:55 ——Application between parent-subsidiary and affiliated corporate entities
- § 3:56 ——Effect of "alter ego" liability on corporate status; corporation not dissolved

§ 3:57	—Liability for illegal distributions
§ 3:58	— —Directors' liability
§ 3:59	— —Shareholders' liability
§ 3:60	—Dissolved corporations (voluntary and involuntary)
§ 3:61	— —Failure to pay or provide for payment of debts upon dissolution
§ 3:62	— — —Post-dissolution lawsuits against corporation
§ 3:63	— —Dissolution by proclamation of secretary of state
§ 3:64	— — —Cause
§ 3:65	— — —Effect
§ 3:66	— — —Reinstatement
§ 3:67	— — —Liability of officers and directors upon dissolution
§ 3:68	Limited liability company ("LLC")
§ 3:69	—Formation of LLCs and PLLCs
§ 3:70	— —Articles of organization
§ 3:71	— — —Contents of articles of organization
§ 3:72	— — —Publication requirement
§ 3:73	Limited liability partnership ("LLP")
§ 3:74	—Registration as LLP
§ 3:75	— —Requisites
§ 3:76	— —Renewal
§ 3:77	—Liability of partners
§ 3:78	Foreign LLPs
§ 3:79	—Notification

3. Guarantors and Sureties

§ 3:80	Generally
§ 3:81	Types of guaranties
§ 3:82	—Unconditional or absolute
§ 3:83	—Conditional
§ 3:84	—Guaranty of collection
§ 3:85	—Continuing guaranty
§ 3:86	— —Revocation
§ 3:87	—Limited/restricted guaranty
§ 3:88	Requirements for valid guaranty
§ 3:89	—In writing
§ 3:90	—Compliance with general contract formalities
§ 3:91	Defenses of sureties and/or guarantors
§ 3:92	—General considerations
§ 3:93	—Creditor materially alters original guaranty agreement without guarantor's consent
§ 3:94	— —Examples of material changes
§ 3:95	— —Nonmaterial changes compared
§ 3:96	—Judgment in favor of primary obligor

TABLE OF CONTENTS

- § 3:97 —Failure of consideration to support guaranty contract
- § 3:98 —Contractual condition precedent
- § 3:99 Guarantor not exonerated
- § 3:100 —Bankruptcy by primary obligor
- § 3:101 —Fraudulent judgments
- § 3:102 —Loss of collateral security
- § 3:103 Waiver of defenses
- § 3:104 —Failure to plead defense in answer

C. SPECIAL CONSIDERATIONS FOR CONSUMER CLAIMS; CONSUMER PROTECTION STATUTES

1. Introduction

- § 3:105 Generally

2. Federal Statutes Protecting Consumer Credit and Installment Sales Transactions

a. Introduction

- § 3:106 Generally

b. Truth in Lending Act

- § 3:107 Generally
- § 3:108 Scope
- § 3:109 —“Creditor” defined
- § 3:110 —Persons who “regularly” extend credit
- § 3:111 —“Consumer credit” defined
- § 3:112 —Types of consumer credit transactions
- § 3:113 —Open-end
- § 3:114 —Closed-end
- § 3:115 —Exempt transactions
- § 3:116 —Refinancing
- § 3:117 Disclosure requirements
- § 3:118 —Purpose
- § 3:119 —When disclosure must be made
- § 3:120 —Open-end transactions
- § 3:121 —Closed-end transactions
- § 3:122 —General nature of disclosure requirements
- § 3:123 —Information to be included
- § 3:124 TILA’s application to debt collection
- § 3:125 —Disclosure requirements for “refinancing”
- § 3:126 ——“Refinancing”
- § 3:127 ——Exceptions
- § 3:128 —Assignees’ liability for TILA violations

- § 3:129 —Collection of debts disputed by open-end creditors
- § 3:130 —Rescission rights
- § 3:131 —Prepayment responsibilities
- § 3:132 Remedies for TILA violations
- § 3:133 —Administrative enforcement
- § 3:134 —Civil liability
- § 3:135 —Damages recoverable
- § 3:136 ——Actual damages
- § 3:137 ——Statutory damages
- § 3:138 ——Attorney's fees and costs
- § 3:139 —Class actions

c. Electronic Funds Transfer Act

- § 3:140 Generally
- § 3:141 "Electronic fund transfer" defined
- § 3:142 Terms and conditions of transfers
- § 3:143 —Disclosures
- § 3:144 —Documentation
- § 3:145 —Pre-authorized transfers
- § 3:146 ——Requirement
- § 3:147 ——Stop payment
- § 3:148 Error resolution
- § 3:149 —Notification of financial institution of error
- § 3:150 —"Error" defined
- § 3:151 ——Written notice by consumer
- § 3:152 —Correction of error
- § 3:153 —Absence of error
- § 3:154 Consumer liability
- § 3:155 —Limit
- § 3:156 —Exception

d. Fair Credit Billing Act

- § 3:157 Generally
- § 3:158 Correction of billing errors
- § 3:159 Reports by creditor not permitted

e. Consumer Leasing Act of 1976

- § 3:160 Generally
- § 3:161 "Consumer lease" defined
- § 3:162 Consumer lease advertisements

f. Fair Credit and Charge Card Disclosure Act of 1988

- § 3:163 Generally
- § 3:164 Requirements of creditor

TABLE OF CONTENTS

g.	Home Equity Loan Consumer Protection Act of 1988
§ 3:165	Generally
§ 3:166	Acceleration
§ 3:167	Index requirement
3.	New York State Statutes Protecting Consumer Credit and Installment Sales Transactions
a.	Introduction
§ 3:168	Generally
b.	GOL Article 29-A; Credit Card Transactions
§ 3:169	Generally
§ 3:170	Liability cannot exceed provisions of TILA
§ 3:171	Consumer defenses
§ 3:172	Limit on objection period void
c.	GOL Article 34; Creditor Billing Errors
§ 3:173	Generally
§ 3:174	Notice of error and response
§ 3:175	Reports by creditor not permitted
d.	GOL Article 34A; Consumer Credit Balances
§ 3:176	Generally
§ 3:177	Automatic refunds
4.	Debtors in Military Service
§ 3:178	Generally
§ 3:179	Servicemembers Civil Relief Act
§ 3:180	—Expanded definition of “military service”
§ 3:181	—Co-debtors have protection
§ 3:182	—Citizens working with allied forces have protection
§ 3:183	—Protection from default judgments
§ 3:184	—Court-appointed attorney to represent servicemember
§ 3:185	—Stay on all proceedings against servicemember
§ 3:186	Stay upon application of servicemember is conditioned on specific criteria
§ 3:187	Stay or vacation of execution of judgments, attachments, and garnishments
§ 3:188	Interest reduction
§ 3:189	Applicable date for interest reduction

ENFORCING JUDGMENTS

- § 3:190 Exception to mandatory interest reduction
- § 3:191 Evictions
- § 3:192 Stay of execution
- § 3:193 Installment purchase contracts
- § 3:194 Penalty for violation
- § 3:195 Mortgages, trust deeds, and the like
- § 3:196 Termination of real property lease
- § 3:197 Termination of motor vehicle lease
- § 3:198 Tolling of statutes of limitations and period to redeem real property
- § 3:199 Procedures provided to enable collection of debt from servicemember

D. EQUAL CREDIT OPPORTUNITY ACT

1. Introduction

- § 3:200 Generally

2. Scope

- § 3:201 Generally
- § 3:202 “Creditor” defined
- § 3:203 “Business credit” defined
- § 3:204 “Consumer credit” defined
- § 3:205 “Credit transaction” defined
- § 3:206 “Discriminate” defined

3. Notification Requirements

- § 3:207 Generally
- § 3:208 Written or oral Notification—When required
- § 3:209 Written or oral—Form
- § 3:210 Record retention
- § 3:211 —Business credit
- § 3:212 —Business credit with regard to business with gross revenues in excess of \$1,000,000
- § 3:213 —Consumer credit

4. Remedies of ECOA Violations

- § 3:214 Generally
- § 3:215 Administrative enforcement
- § 3:216 Civil liability
- § 3:217 —Actual damages
- § 3:218 —Punitive damages
- § 3:219 —Attorney’s fees and costs

TABLE OF CONTENTS

E. INVESTIGATING DEBTORS

1. Introduction

§ 3:220 Generally

2. Locating Debtor

§ 3:221 Generally

§ 3:222 Business debtors

§ 3:223 —Secretary of State

§ 3:224 Individual debtors

§ 3:225 —Debtor's employer, friends, neighbors, and the like

§ 3:226 ——Restrictions on third party contacts

§ 3:227 —Post office

§ 3:228 ——“Address correction requested”

§ 3:229 ——Obtaining post office box holder's address

§ 3:230 ——Private boxes or mail drops

§ 3:231 —Telephone directories

§ 3:232 ——“Criss-cross” directories

§ 3:233 ———Finding debtor's street number

§ 3:234 ———Finding debtor's street or phone number

§ 3:235 ———Other information

§ 3:236 ———Electronic directories

§ 3:237 ———Internet databases

§ 3:238 —Department of Motor Vehicles

§ 3:239 ——Obtaining DMV abstracts

§ 3:240 —Voter registration records

§ 3:241 —Business license and tax records

§ 3:242 —Occupational and business licensors

§ 3:243 —Unions and trade associations

§ 3:244 —Skip tracers

3. Investigating Debtor's Assets

§ 3:245 Generally

§ 3:246 County clerk's office

§ 3:247 Title companies

§ 3:248 Secretary of State

§ 3:249 County tax assessor

§ 3:250 Court records

§ 3:251 Investigation services

II. COLLECTION WITHOUT SUIT

A. STATUTES WHICH GOVERN

§ 3:252 Generally

ENFORCING JUDGMENTS

- § 3:253 Federal Fair Debt Collection Practices Act
- § 3:254 New York General Business Law Article 29-H

B. INITIAL CONTACT WITH DEBTOR

1. Introduction

- § 3:255 Generally

2. Making Demand on Debtor

- § 3:256 Generally
- § 3:257 Practical considerations
- § 3:258 —Fixes times for fee payment
- § 3:259 —Time of essence in collection cases
- § 3:260 —Prerequisite to suit
- § 3:261 Contents of demand letter
- § 3:262 —Commercial claims
- § 3:263 —Consumer claims
- § 3:264 ——Impermissible activity
- § 3:265 ——False information concerning credit worthiness
 - § 3:266 ——Communication of nature of claim
 - § 3:267 ——Disclosure of disputed debt
 - § 3:268 ——Threat of non-usual activity
 - § 3:269 ——Threat of non-existent right
 - § 3:270 ——Special notice requirements
 - § 3:271 ——Proper identification as “debt collector” critical
 - § 3:272 —Liability for violations
 - § 3:273 ——Tort liability
 - § 3:274 ——Statutory liability
 - § 3:275 ——Threat of arrest, seizure, or sale
 - § 3:276 ——Threats to file suit
 - § 3:277 ——Threat to communicate with debtor’s employer
 - § 3:278 ——State bar discipline
 - § 3:279 ——Criminal prosecution
 - § 3:280 —Claims against decedent’s estate
 - § 3:281 ——Procedure
 - § 3:282 ——Where to file claim
 - § 3:283 ——When to file claim
 - § 3:284 ——Allowance or rejection of claim
 - § 3:285 ——Time to act
 - § 3:286 ——Creditor’s action on rejected claim

3. Telephoning or Visiting Debtor

- § 3:287 Generally

TABLE OF CONTENTS

C. SETTLEMENT AND COMPROMISE

1. Introduction

- § 3:288 Generally
- § 3:289 Considerations

2. Protecting Creditor

- § 3:290 Generally
- § 3:291 Promissory note
- § 3:292 —Contents
- § 3:293 ——New Reg. Z disclosures for consumer obligations
- § 3:294 ——Amendment to existing note compared
- § 3:295 ——Suit filed on note, not original obligation
- § 3:296 Settlement stipulation
- § 3:297 ——Jurisdiction should be included
- § 3:298 Guaranty
- § 3:299 ——Creditor's forbearance constitutes consideration for guaranty
- § 3:300 Security
- § 3:301 ——Use of home as security
- § 3:302 ——Disadvantages to obtaining security compared
- § 3:303 ——Bankruptcy preference
- § 3:304 Confession of judgment
- § 3:305 ——Exception; Consumer obligations of non-residents
- § 3:306 Assignment of wages

3. Remittances

- § 3:307 Generally
- § 3:308 "Payment in full" checks
- § 3:309 Claims not in dispute
- § 3:310 Claims which are disputed
- § 3:311 —Accord and satisfaction
- § 3:312 ——Manifestation of intent
- § 3:313 ——Clean and unambiguous notice
- § 3:314 ——Accord and satisfaction
- § 3:315 Preservation of creditor's rights
- § 3:316 Bankruptcy considerations

D. SELF-HELP REPOSSESSION

- § 3:317 Generally
- § 3:318 Creditors' rights and remedies
- § 3:319 Limitations

III. PRE-SUIT CONSIDERATIONS

A. INTRODUCTION

§ 3:320 Generally

B. WILL JUDGMENT AGAINST DEBTOR BE COLLECTIBLE?

1. Introduction

§ 3:321 Generally

2. Asset Investigation

§ 3:322 Generally

3. Bankruptcy Considerations

§ 3:323 Generally

§ 3:324 Involuntary bankruptcy compared

§ 3:325 Proof of claim

§ 3:326 Notice of appearance

4. Availability of Provisional Remedies

§ 3:327 Generally

§ 3:328 Attachment of commercial claim

§ 3:329 Receivers

C. RECOVERABILITY OF INTEREST AND ATTORNEY'S FEES

§ 3:330 Generally

§ 3:331 Prejudgment interest

§ 3:332 —Contract actions

§ 3:333 ——Interest provision

§ 3:334 ——Compound interest

§ 3:335 ——No interest provision

§ 3:336 ——Liquidated claim

§ 3:337 ——Exceptions

§ 3:338 ——Unliquidated claim

§ 3:339 —Interest rate

§ 3:340 ——Municipal entities may receive different treatment

§ 3:341 ——Usury problems

§ 3:342 ——Civil damages and penalties

§ 3:343 ——Attorney's fees

§ 3:344 ——Criminal penalties

§ 3:345 ——Savings clause limiting interest rate

TABLE OF CONTENTS

§ 3:346	— — — “Unconscionable” interest rates
§ 3:347	— — — RICO problems
§ 3:348	— Noncontractual claims
§ 3:349	— Interest rate
§ 3:350	— — — Eminent domain exception
§ 3:351	— — — Joint tortfeasor settlements
§ 3:352	Late charges
§ 3:353	— Consumer obligations
§ 3:354	— Real estate loans
§ 3:355	— Liquidated damages
§ 3:356	— Interest on overdue commercial transactions exempt from usury law
§ 3:357	Attorney’s fees
§ 3:358	— Provided in contract
§ 3:359	— Authorized by statute or “by law”
D. RECOVERABILITY OF FRAUDULENT TRANSFERS OR VOIDABLE TRANSACTIONS	
1. Introduction	
§ 3:360	Generally
2. Creditors’ Remedies under Fraudulent Transfer or Voidable Transaction Statutes	
§ 3:361	Generally
§ 3:362	Applicable statutes
§ 3:363	— Insolvency
3. What Determines That a Transaction is Voidable	
§ 3:364	Generally
§ 3:365	Intent
§ 3:366	— Elements to be proven
§ 3:367	— “Badges of fraud”
§ 3:368	Exception
§ 3:369	— What constitutes “reasonably equivalent value”
4. “Reasonably Equivalent” Test	
§ 3:370	Generally
§ 3:371	Insolvency
§ 3:372	— Presumption of insolvency
§ 3:373	— Balance sheet insolvency
§ 3:374	Exceptions; Enforcement of liens and leases
§ 3:375	Creditor’s remedies

- § 3:376 —Set aside conveyance
- § 3:377 —Retain property as security
- § 3:378 —Avoid transfer to satisfy claim
- § 3:379 ——Extinguishment of Claim
- § 3:380 —Avoid transaction to satisfy claim—Judgment against transferee
- § 3:381 ——Amount of judgment
- § 3:382 —Avoid transfer to satisfy claim—Judgment against transferee—Good faith transferee's rights
- § 3:383 ——Appropriate court
- § 3:384 ——Where creditor's claim has not matured
- § 3:385 Bulk sales

E. FEDERAL DEBT COLLECTION PROCEDURES ACT

- § 3:386 Generally

F. OTHER REMEDIES COMPARED

- § 3:387 Generally

G. SMALL CLAIMS

1. Introduction

- § 3:388 Generally

2. Separate Statute for Commercial and Non-Commercial Claims

- § 3:389 Generally

3. Corporate Involvement Limited under Article 18

- § 3:390 Generally

- § 3:391 Corporation may defend

- § 3:392 Corporation may commence action under Article 18-A

- § 3:393 —Quantity of claims limited

- § 3:394 —Appearance by corporation

- § 3:395 ——Non-lawyer appearance binds corporation

4. Attorney Involvement

- § 3:396 Generally

- § 3:397 Advice

- § 3:398 Testimony

- § 3:399 Collection of judgment

5. Appearances

- § 3:400 Generally

TABLE OF CONTENTS

§ 3:401	Who appears for entity creditors
§ 3:402	—Corporations
§ 3:403	—Other entities
	6. Commercial Claims
§ 3:404	Generally
	7. Consumer Transaction
§ 3:405	Generally
	8. Jurisdictional Limit
§ 3:406	Generally
	9. Procedure
§ 3:407	Generally
§ 3:408	Commercial claims' requirements
	10. Counterclaims
§ 3:409	Generally
	11. Review
§ 3:410	Generally
§ 3:411	Right to appeal extremely limited
	12. Judgment Enforcement
§ 3:412	Generally
§ 3:413	Notice
§ 3:414	Enforcement
§ 3:415	No prejudgment attachment available
	H. FILING SUIT IN CIVIL, DISTRICT, COUNTY OR SUPREME COURTS COMPARED
§ 3:416	Generally
§ 3:417	Jurisdictional limits
§ 3:418	Procedural variations
§ 3:419	—Commencing suit in civil or district court
§ 3:420	—Commencing suit in supreme court
§ 3:421	Complaints based on ordinary causes of action
§ 3:422	—Account stated
§ 3:423	Money had and received
§ 3:424	Work, labor, and services rendered
§ 3:425	Goods sold and delivered
§ 3:426	Money lent or paid
§ 3:427	Breach of contract

- § 3:428 Statute of limitations for causes of action
- § 3:429 —Sale of goods
- § 3:430 —Breach of contract contrasted with non-medical malpractice claims
- § 3:431 —Personal injury
- § 3:432 —Intentional torts
- § 3:433 Verification
- § 3:434 Pre-judgment interest
- § 3:435 Post-judgment interest on consumer debts
- § 3:436 Attorney's fees
- § 3:437 Stipulating to judgment

IV. COMMERCIAL FINANCING DISCLOSURE REQUIREMENTS UNDER FINANCIAL SERVICES LAW

- § 3:438 Generally
- § 3:439 "Commercial financing" defined
- § 3:440 Definition of open-end commercial financing
- § 3:441 Disclosure requirements of an open-end commercial financing provider
- § 3:442 Definition of closed-end financing
- § 3:443 Disclosure requirements of a closed-end commercial financing provider
- § 3:444 Factoring transaction definition
- § 3:445 Factoring transaction disclosure requirements
- § 3:446 Sales-based financing transaction defined
- § 3:447 Sales-based financing transaction disclosure requirements
- § 3:448 Exemptions

V. FORMS

- § 3:449 Unconditional personal guarantee—Form 3-1
- § 3:450 Commercial demand letter—Form 3-2
- § 3:451 Negotiable promissory note—Form 3-3
- § 3:452 Corporate acknowledgement—Form 3-4
- § 3:453 Complaint-promissory note—Form 3-5
- § 3:454 Stipulation of settlement—Form 3-6
- § 3:455 Complaint-goods sold and delivered, account stated work, labor and services—Form 3-7
- § 3:456 Additional Notice of Lawsuit—Form 3-8

CHAPTER 4. PROVISIONAL REMEDIES

I. INTRODUCTION

- § 4:1 Rationale behind granting provisional remedies

TABLE OF CONTENTS

- § 4:2 Constitutionality of provisional remedies
- § 4:3 —New York Constitution
- § 4:4 —Statutory authority

II. ATTACHMENT UNDER CPLR ART. 62

A. DUAL ROLE OF ATTACHMENT

- § 4:5 Generally

**B. TYPE OF ACTION IN WHICH ATTACHMENT
MAY BE OBTAINED**

- § 4:6 Generally

C. GROUNDS

- § 4:7 Generally
- § 4:8 Prerequisites to be satisfied
- § 4:9 —CPLR 6201(1) allows for attachment against non-resident defendants
- § 4:10 —CPLR 6201(2) allows for attachment if resident defendants cannot be served
- § 4:11 —Intent to defraud, dispose of, or secret property
- § 4:12 —Crime victim
- § 4:13 —Action based on prior judgment, decree, or order

**D. SITUS OF PROPERTY SOUGHT TO BE
ATTACHED**

- § 4:14 Generally
- § 4:15 Property subject to attachment
- § 4:16 —Actual debts due
- § 4:17 —Property that can be assigned or transferred
- § 4:18 —Income earned by defendant
- § 4:19 Types of debts due defendant which qualify for attachment under CPLR 5201(a)
- § 4:20 Assignable property interests under CPLR 5201(b)
- § 4:21 —Exceptions

**E. PROCEDURE TO OBTAIN ORDER OF
ATTACHMENT**

- § 4:22 Generally
- § 4:23 State court provisional remedy of attachment usable in federal courts to secure *quasi in rem* jurisdiction
- § 4:24 Motion or order to show cause

ENFORCING JUDGMENTS

- § 4:25 —Likelihood of success on merits
- § 4:26 Specific rules
- § 4:27 —*Ex parte* motion to obtain order of attachment
- § 4:28 ——Necessity for confirmation of *ex parte* order of attachment
- § 4:29 ——Failure to confirm *ex parte* order of attachment
- § 4:30 —Motion on notice to obtain order of attachment under CPLR 6210
- § 4:31 ——Evidentiary facts essential
- § 4:32 ——Order not routinely granted
- § 4:33 ——Adversary hearing held
- § 4:34 ——Alternative to time delay

F. BURDEN OF PROOF

- § 4:35 Generally

G. UNDERTAKING

- § 4:36 Generally
- § 4:37 Amount
- § 4:38 Indemnification for defendant

H. FILING ORDER OF ATTACHMENT

- § 4:39 Generally

I. DISCLOSURE UNDER CPLR 6220

- § 4:40 Generally

J. LEVY

- § 4:41 Introduction
- § 4:42 Generally
- § 4:43 Levy on real property
- § 4:44 —Different rule for personal property
- § 4:45 Levy on personal property
- § 4:46 —Actual seizure
- § 4:47 —Constructive seizure
- § 4:48 —Duties of garnishee
- § 4:49 ——Specificity of statement
- § 4:50 ——Statement may be limited
- § 4:51 —Entitlement of garnishee
- § 4:52 —Special proceeding against garnishee
- § 4:53 ——Failure to bring action against garnishee voids levy

TABLE OF CONTENTS

K. DEFENDANT'S REMEDIES

- § 4:54 Generally
- § 4:55 Oppose motion for attachment
- § 4:56 Oppose motion to confirm order of attachment
- § 4:57 Attack validity of attachment
- § 4:58 Seek to annul attachment
- § 4:59 Seek to modify or vacate order of attachment
- § 4:60 Recover for costs and damages

L. EFFECT OF BANKRUPTCY ON ATTACHMENT

- § 4:61 Generally

**III. PRELIMINARY INJUNCTION UNDER CPLR
ART. 63**

**A. TYPE OF ACTIONS IN WHICH PRELIMINARY
INJUNCTION MAY BE OBTAINED**

- § 4:62 Generally

**B. PRELIMINARY INJUNCTION, PERMANENT
INJUNCTION, AND TEMPORARY
RESTRAINING ORDER SIMILARITIES AND
DISTINCTIONS**

- § 4:63 Generally
- § 4:64 Preliminary injunction
- § 4:65 —Statutory authority
- § 4:66 —One type of provisional remedy
- § 4:67 —Notice required
- § 4:68 —Grounds and need required
- § 4:69 —Bond required
- § 4:70 —Available only in equity or combined actions
- § 4:71 —Effective dates
- § 4:72 Permanent injunction
- § 4:73 —Equitable remedy
- § 4:74 —Available at termination of case by judgment
- § 4:75 —Available only after trial
- § 4:76 —Papers on which permanent injunction is based
- § 4:77 —Undertaking
- § 4:78 —Operative dates
- § 4:79 Temporary restraining order
- § 4:80 —Statutorily created
- § 4:81 —When obtained

- § 4:82 —Obtained *ex parte*
- § 4:83 —Temporary effectiveness
- § 4:84 —No undertaking required
- § 4:85 —Discretionary by court
- § 4:86 —Unavailable if preliminary injunction has been denied or cannot be granted
- § 4:87 —Immediate and irreparable injury must be proven
- § 4:88 —Purpose
- § 4:89 —Effective dates

C. ONE CAUSE OF ACTION FOR ALL THREE REMEDIES

- § 4:90 Generally

D. GROUNDS FOR ISSUANCE OF PRELIMINARY INJUNCTION UNDER CPLR 6301

- § 4:91 Generally
- § 4:92 Actions wherein ultimate relief sought is permanent injunction
 - § 4:93 —Defendant's current activity harmful
 - § 4:94 —Judgment could be rendered ineffectual
 - § 4:95 —Irreparable injury to plaintiff
 - § 4:96 —Genuine risk of performance by defendant
 - § 4:97 Actions in which plaintiff's interest in specific subject matter is threatened
 - § 4:98 —Violation of or detriment to plaintiff's rights rendering ultimate judgment ineffectual
 - § 4:99 —Property must be subject of action
 - § 4:100 Prohibitory and mandatory injunctions
 - § 4:101 —Prohibitory injunction defined
 - § 4:102 —Mandatory injunction defined
 - § 4:103 Enforcement of injunctions
 - § 4:104 Evidentiary proof requirements
 - § 4:105 —Likelihood of success on merits
 - § 4:106 —Irreparable harm
 - § 4:107 —Balancing equities
 - § 4:108 —Earlier injunction will be dissolved if equities are reviewed and found to be tilted
 - § 4:109 Clean hands necessary
 - § 4:110 Affidavits and supporting papers under CPLR 6312
 - § 4:111 Undertaking under CPLR 6312(b)
 - § 4:112 —Purpose
 - § 4:113 —Amount

TABLE OF CONTENTS

§ 4:114 Issues of fact not enough to warrant denial of preliminary injunction

E. TEMPORARY RESTRAINING ORDERS UNDER CPLR 6301 AND 6313

§ 4:115 Introduction

§ 4:116 Generally

§ 4:117 Procedure for issuance of temporary restraining order under CPLR 6313

§ 4:118 —Higher burden of proof

§ 4:119 ——Immediacy of anticipated injury

§ 4:120 —*Ex parte* application

§ 4:121 ——Contempt for violation

§ 4:122 Undertaking under CPLR 6313(c)

F. VACATUR OR MODIFICATION UNDER CPLR 6314

§ 4:123 Generally

§ 4:124 Test for vacatur of TRO

§ 4:125 —Abuse of discretion must be shown

§ 4:126 Undertaking may be required

G. ASCERTAINMENT OF DAMAGES UNDER CPLR 6315

§ 4:127 Generally

§ 4:128 Ascertainment in same proceeding

§ 4:129 Separate plenary action

§ 4:130 Available only after final order

§ 4:131 —Measure of damages

H. MISCELLANEOUS ISSUES; OBSCENE PRINTS AND ARTICLES

§ 4:132 Generally

§ 4:133 Expedited trial

§ 4:134 Suppression of evidence may be sought

§ 4:135 Relief discretionary to court

IV. RECEIVERSHIP

A. INTRODUCTION

§ 4:136 Generally

§ 4:137 Limited availability

- § 4:138 Temporary receiver
- § 4:139 Court's discretion

B. GROUNDS FOR APPOINTMENT OF RECEIVER

- § 4:140 Generally
- § 4:141 Situations appropriate for receivership

C. APPOINTMENT OF RECEIVER

- § 4:142 Generally
- § 4:143 Motion procedure
- § 4:144 —Notice required
- § 4:145 —Papers necessary with motion
- § 4:146 —Evidentiary facts necessary
- § 4:147 Timing for appointment

D. POWERS AND DUTIES OF RECEIVER

- § 4:148 Generally
- § 4:149 Limitations to powers
- § 4:150 Personal liability of receiver
- § 4:151 Compensation of receiver

E. DURATION OF RECEIVERSHIP

- § 4:152 Generally

F. OATH

- § 4:153 Generally

G. UNDERTAKING

- § 4:154 Generally

H. ACCOUNTING

- § 4:155 Generally
- § 4:156 Statutory requirement
- § 4:157 Court overview
- § 4:158 Fees of temporary receiver
- § 4:159 Additional requirements of Uniform Civil Rules for Supreme Court and County Court
 - § 4:160 —Withdrawals must be ordered by court or bonded
 - § 4:161 —Inspection must be available
 - § 4:162 —Annual accounting
 - § 4:163 Final accounting

TABLE OF CONTENTS

§ 4:164 —County clerk's certificate required for final accounting

I. REMOVAL OR TERMINATION OF RECEIVER

§ 4:165 Generally

§ 4:166 Motion of party

§ 4:167 Order of court

§ 4:168 Conclusion of duties

V. NOTICE OF PENDENCY (“LIS PENDENS”)

A. INTRODUCTION

§ 4:169 Generally

§ 4:170 Constructive notice to all persons

§ 4:171 Interest in land required

B. GROUNDS

§ 4:172 Generally

§ 4:173 Examples

C. NECESSARY PAPERS

§ 4:174 Generally

§ 4:175 Filing

§ 4:176 —Mandatory filing in certain actions

§ 4:177 —Index number not required

§ 4:178 —Due process not violated

§ 4:179 —No liability to filing party except for malice

§ 4:180 Indexing

D. SUIT MUST BE COMMENCED

§ 4:181 Generally

E. LIS PENDENS NOT PERMITTED

§ 4:182 Generally

F. DURATION

§ 4:183 Generally

§ 4:184 Extension

§ 4:185 Failure to obtain extension

G. CANCELLATION OF NOTICE OF PENDENCY

§ 4:186 Generally

§ 4:187	Mandatory
§ 4:188	—Service not timely made
§ 4:189	—Settlement of action
§ 4:190	—No timely appeal of adverse decision
§ 4:191	—No stay of enforcement of final judgment against plaintiff
§ 4:192	—Improper filing
§ 4:193	Discretionary
§ 4:194	—Costs and expenses for cancellation
§ 4:195	Cancellation upon stipulation of parties
§ 4:196	—Stipulation executed by all appearing parties
§ 4:197	—Affidavit as to service and which parties have appeared
§ 4:198	Cancellation by plaintiff
§ 4:199	Undertaking
§ 4:200	Notice of pendency ineffective once underlying suit ceases

VI. REPLEVIN (SEIZURE OF CHATTEL)

A. INTRODUCTION

§ 4:201	Generally
---------	-----------

B. ACTION FOR POSSESSORY RIGHT TO CHATTEL

§ 4:202	Generally
§ 4:203	Effect if chattel not in hands of successful party

C. DISTINGUISHED FROM ATTACHMENT

§ 4:204	Generally
---------	-----------

D. REPLEVIN NOT TECHNICALLY PROVISIONAL REMEDY BUT TREATED AS ONE

§ 4:205	Generally
---------	-----------

E. GROUNDS

§ 4:206	Generally
§ 4:207	Entitlement to possession by plaintiff
§ 4:208	Wrongful possession by defendant
§ 4:209	Value of chattel
§ 4:210	No defense

F. PROPERTY SUBJECT TO RECOVERY

§ 4:211	Generally
---------	-----------

TABLE OF CONTENTS

- § 4:212 Real property or fixtures attached to real property excluded
- § 4:213 Commingled good generally not subject to replevin

G. STATUTE OF LIMITATIONS

- § 4:214 Generally
- § 4:215 No tolling of statute in supreme or county court

H. VENUE

- § 4:216 Generally

I. PROCEDURE FOR OBTAINING SEIZURE OF CHATTEL

- § 4:217 Generally
- § 4:218 Motion on notice for order of seizure
- § 4:219 —Probability of success must be shown
- § 4:220 —Condition precedent to seeking replevin necessary unless abated
- § 4:221 *Ex parte* motion for order of seizure
- § 4:222 —Threat must be shown

J. UNDERTAKING

- § 4:223 Generally
- § 4:224 Amount
- § 4:225 —Court will determine whether any amount in excess of twice value is necessary

K. ORDER OF SEIZURE

- § 4:226 Generally
- § 4:227 Motion on notice required
- § 4:228 Authority to break into premises sometimes granted
- § 4:229 Temporary restraining order
- § 4:230 *Ex parte* motion
- § 4:231 —Not routinely granted
- § 4:232 —Confirmation of order
- § 4:233 —Effect of failure to obtain confirmation or order
- § 4:234 —Costs and expenses

L. SEIZURE OF CHATTEL

- § 4:235 Generally
- § 4:236 Delivery of documents to sheriff
- § 4:237 Sheriff to act expeditiously

ENFORCING JUDGMENTS

- § 4:238 Service by sheriff of documents upon possessor of chattel and all parties
- § 4:239 Immediate seizure upon service of papers
- § 4:240 Sheriff to hold chattel before delivering to plaintiff

M. EXCEPTION TO AND JUSTIFICATION OF SURETIES

- § 4:241 Generally
- § 4:242 Exceptions may be set aside by court
- § 4:243 Failure of surety to justify

N. RECLAMATION OF CHATTEL

- § 4:244 Generally
- § 4:245 Documents to be served upon sheriff and all parties
- § 4:246 Sheriff to hold chattel for ten days
- § 4:247 Sheriff's action where reclamation by multiple parties

O. MOTION TO IMPOUND CHATTEL

- § 4:248 Generally
- § 4:249 When motion may be made
- § 4:250 Value to be determined
- § 4:251 Undertaking required

P. MOTION TO RETURN CHATTEL

- § 4:252 Generally
- § 4:253 Grounds
- § 4:254 —Exempt property
- § 4:255 —Value to defendant
- § 4:256 —Plaintiff not prejudiced
- § 4:257 —Interests of justice
- § 4:258 —No requirement for bond
- § 4:259 Discretion of court
- § 4:260 Restraining order granted simultaneously

Q. PAYMENT OF SHERIFF'S FEES AND EXPENSES

- § 4:261 Generally

R. LIABILITY OF SHERIFF

- § 4:262 Generally

TABLE OF CONTENTS

S. SHERIFF'S RETURN

§ 4:263 Generally

T. SEIZING, RECLAIMING, OR RETURNING LESS THAN ALL CHATTELS

§ 4:264 Generally

U. UNIQUE AND NON-UNIQUE CHATTEL

§ 4:265 Generally

§ 4:266 Examples of unique chattels

§ 4:267 Example of non-unique chattels

V. JUDGMENT

§ 4:268 Generally

§ 4:269 Generally award of possession

§ 4:270 Alternative monetary award

§ 4:271 Wrongful taking, detention, or depreciation damages

§ 4:272 Where value of chattel should not be awarded

§ 4:273 —Value of chattel exceeds damages

§ 4:274 —Defendant's special property less than value of chattel

§ 4:275 ——Execution

§ 4:276 Where jury fails to fix sum

W. REPLEVIN (SEIZURE OF CHATTEL) VERSUS ORDER OF ATTACHMENT

§ 4:277 Generally

VII. FORMS

§ 4:278 Order to show cause (containing temporary restraining order) why order of attachment should not be granted—Form 4-1

§ 4:279 Affidavit of officer of plaintiff in support of ex parte motion for order of attachment—Form 4-2

§ 4:280 Affirmation of attorney in support of ex parte motion for order of attachment—Form 4-3

§ 4:281 Order to show cause why order of attachment granted ex parte should not be confirmed—Form 4-4

§ 4:282 Affidavit in support of motion to confirm order of attachment granted ex parte—Form 4-5

§ 4:283 Order confirming order of attachment granted ex parte—Form 4-6

ENFORCING JUDGMENTS

- § 4:284 Notice of motion for order of attachment—Form 4–7
- § 4:285 Affidavit of plaintiff in support of motion for order of attachment—Form 4–8
- § 4:286 Affidavit of attorney in support of motion for order of attachment—Form 4–9
- § 4:287 Undertaking on motion for attachment—Form 4–10
- § 4:288 Order of attachment—Form 4–11
- § 4:289 Order to show cause for disclosure in aid of attachment—Form 4–12
- § 4:290 Affidavit in support of motion for disclosure in aid of attachment—Form 4–13
- § 4:291 Order directing disclosure in aid of attachment—Form 4–14
- § 4:292 Notice of attachment upon real property—Form 4–15
- § 4:293 Garnishee’s statement (denial of indebtedness or possession of property)—Form 4–16
- § 4:294 Notice of petition in special proceeding against garnishee to compel payment of debt to sheriff—Form 4–17
- § 4:295 Petition in special proceeding against garnishee to compel payment of debt to sheriff—Form 4–18
- § 4:296 Judgment in special proceeding against garnishee to compel payment of debt to sheriff—Form 4–19
- § 4:297 Notice of motion to vacate order of attachment granted ex parte for failure to move for confirmation—Form 4–20
- § 4:298 Affidavit in support of motion to vacate order of attachment granted ex parte for failure to move for confirmation—Form 4–21
- § 4:299 Order vacating order of attachment granted ex parte for failure to move for confirmation—Form 4–22
- § 4:300 Order to show cause why order of attachment should not be vacated or modified—Form 4–23
- § 4:301 Order vacating order of attachment—Form 4–24
- § 4:302 Notice of motion for preliminary injunction—Form 4–25
- § 4:303 Affidavit in support of motion for preliminary injunction—Form 4–26
- § 4:304 Order granting preliminary injunction—Form 4–27
- § 4:305 Undertaking upon motion for preliminary injunction—Form 4–28
- § 4:306 Order to show cause why preliminary injunction should not issue (containing temporary restraining order)—Form 4–29
- § 4:307 Order granting preliminary injunction (following order to show cause containing restraining order)—Form 4–30

TABLE OF CONTENTS

§ 4:308	Notice of motion to vacate or modify preliminary injunction—Form 4–31
§ 4:309	Affidavit in support of motion to vacate preliminary injunction—Form 4–32
§ 4:310	Order vacating preliminary injunction—Form 4–33
§ 4:311	Undertaking given by defendant as condition to vacating preliminary injunction—Form 4–34
§ 4:312	Affidavit in support of motion to ascertain damages sustained by reason of preliminary injunction—Form 4–35
§ 4:313	Order ascertaining damages sustained by reason of preliminary injunction—Form 4–36
§ 4:314	Affidavit in support of motion to appoint temporary receiver on foreclosure of a mortgage—Form 4–37
§ 4:315	Order appointing temporary receiver on foreclosure of mortgage—Form 4–38
§ 4:316	Notice of motion to appoint temporary receiver—Form 4–39
§ 4:317	Order to show cause why temporary receiver should not be appointed—Form 4–40
§ 4:318	Affidavit in support of motion to appoint temporary receiver—Form 4–41
§ 4:319	Order to show cause why order appointing temporary receiver should not be modified to require receiver to post undertaking—Form 4–42
§ 4:320	Undertaking of temporary receiver—Form 4–43
§ 4:321	Intermediate account of temporary receiver—Form 4–44
§ 4:322	Notice of motion to settle intermediate account of temporary receiver—Form 4–45
§ 4:323	Affidavit of temporary receiver in support of motion to settle intermediate account—Form 4–46
§ 4:324	Order settling intermediate account of temporary receiver—Form 4–47
§ 4:325	Order to show cause for removal of temporary receiver—Form 4–48
§ 4:326	Affidavit in support of order to show cause for removal of temporary receiver—Form 4–49
§ 4:327	Order directing removal of temporary receiver—Form 4–50
§ 4:328	Notice of pendency—Form 4–51
§ 4:329	Affidavit in support of motion to cancel notice of pendency on ground that action is not one in which notice of pendency can be secured—Form 4–52
§ 4:330	Affidavit in support of motion to extend duration of notice of pendency—Form 4–53

- § 4:331 Order to show cause why notice of pendency should not be cancelled for failure to complete service within 30 days—Form 4-54
- § 4:332 Affidavit in support of motion to cancel notice of pendency for failure to complete service within 30 days—Form 4-55
- § 4:333 Order canceling notice of pendency for failure to complete service within 30 days—Form 4-56
- § 4:334 Stipulation consenting to cancellation—Form 4-57
- § 4:335 Affidavit by attorney to be filed with stipulation consenting to cancellation—Form 4-58
- § 4:336 Affidavit in support of motion to cancel notice of pendency upon giving of undertaking—Form 4-59
- § 4:337 Undertaking for cancellation of notice of pendency—Form 4-60
- § 4:338 Complaint to recover chattel wrongfully detained—Form 4-61
- § 4:339 Notice of motion for order of seizure (replevy of chattel)—Form 4-62
- § 4:340 Affidavit for order of seizure (replevy of chattel)—Form 4-63
- § 4:341 Order of seizure—Form 4-64
- § 4:342 Order to show cause why order of seizure granted without notice (ex parte) should not be confirmed—Form 4-65
- § 4:343 Affidavit in support of motion to confirm order of seizure granted without notice (ex parte)—Form 4-66
- § 4:344 Order confirming order of seizure granted without notice (ex parte)—Form 4-67
- § 4:345 Notice of exception to surety—Form 4-68
- § 4:346 Reclaiming notice—Form 4-69
- § 4:347 Affidavit upon reclamation of chattel—Form 4-70
- § 4:348 Undertaking upon reclamation of chattel—Form 4-71
- § 4:349 Affidavit in support of motion to impound chattel—Form 4-72
- § 4:350 Undertaking for impounding of chattel—Form 4-73
- § 4:351 Affidavit in support of motion to return chattel—Form 4-74
- § 4:352 Order returning chattel—Form 4-75
- § 4:353 Notice of motion to punish sheriff for contempt for failure to file return—Form 4-76
- § 4:354 Affidavit in support of motion to punish sheriff for contempt for failure to file return—Form 4-77
- § 4:355 Order punishing sheriff for contempt for failure to file return and permitting sheriff to purge—Form 4-78

TABLE OF CONTENTS

- § 4:356 Order to show cause (containing temporary restraining order) for preliminary injunction in relation to unique chattel—Form 4-79
- § 4:357 Affidavit in support of order to show cause (containing temporary restraining order) for preliminary injunction in relation to unique chattel—Form 4-80
- § 4:358 Affidavit on ex parte motion to take deposition to ascertain location of chattel and to restrain violation of rights therein—Form 4-81
- § 4:359 Judgment for plaintiff where chattel has been replevied and is in plaintiff's possession—Form 4-82
- § 4:360 Judgment for plaintiff where chattel is not in plaintiff's possession—Form 4-83
- § 4:361 Judgment directing delivery of unique chattel—Form 4-84

CHAPTER 5. BANKRUPTCY CONSIDERATIONS

I. INTRODUCTION

A. GENERAL CONSIDERATIONS

- § 5:1 Generally
- § 5:2 Bankruptcy code
- § 5:3 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
- § 5:4 Effective Date
- § 5:5 Bankruptcy rules
- § 5:6 —Federal rules of bankruptcy procedure
- § 5:7 —Chambers rules
- § 5:8 —Local bankruptcy rules

B. GENERAL ORDERS

- § 5:9 Generally
- § 5:10 Public access to court electronic documents
- § 5:11 Web pacer
- § 5:12 U.S. party case index
- § 5:13 Electronic filing of documents

C. ADDITIONAL FEDERAL STATUTORY PROVISIONS

- § 5:14 Generally
- § 5:15 Jurisdiction

- § 5:16 Venue
- § 5:17 Jury trials
- § 5:18 Removal
- § 5:19 Bankruptcy judges
- § 5:20 Appeals
- § 5:21 United states trustees
- § 5:22 Arbitration
- § 5:23 Filing fees
- § 5:24 Trustees, receivers, and managers
- § 5:25 Bankruptcy crimes

D. ADDITIONAL REFERENCE SOURCES

- § 5:26 Treatises, texts, and practice guides
- § 5:27 State laws
- § 5:28 Real and personal property
- § 5:29 —Exemptions

E. TYPES OF BANKRUPTCY CASES

1. Introduction

- § 5:30 Generally

2. Voluntary Cases

- § 5:31 Generally
- § 5:32 Chapter 7
- § 5:33 Needs based bankruptcy
- § 5:34 The “means test”
- § 5:35 “Current monthly income”
- § 5:36 Mandatory reductions to “current monthly income”
- § 5:37 Additional permissive reductions to “current monthly income”
- § 5:38 Exception to “means test”
- § 5:39 Sanctions against attorneys
- § 5:40 Chapter 9
- § 5:41 Chapter 11
- § 5:42 Small business Chapter 11
- § 5:43 Duties and special provisions for a small business debtor under the Bankruptcy Code
- § 5:44 Plan filing and confirmation deadlines
- § 5:45 Chapter 12
- § 5:46 Permanent reenactment of Chapter 12
- § 5:47 Expansion of Chapter 12 to include family fishermen
- § 5:48 Debt limits increase for family farmers
- § 5:49 Family fisherman defined

TABLE OF CONTENTS

§ 5:50 Family fisherman with regular income defined
§ 5:51 Chapter 13

3. Involuntary Cases

§ 5:52 Generally
§ 5:53 Chapter 7
§ 5:54 Chapter 11

II. OVERVIEW OF SUBSTANTIVE BANKRUPTCY LAW

A. AUTOMATIC STAY

§ 5:55 Generally
§ 5:56 Effect and scope
§ 5:57 Exceptions to automatic stay with respect to small business serial filers
§ 5:58 Notice
§ 5:59 Duration
§ 5:60 Violations
§ 5:61 —Sanctions against attorneys
§ 5:62 —Damages
§ 5:63 —Void versus voidable

B. RELIEF

§ 5:64 Generally
§ 5:65 Grounds
§ 5:66 —Cause
§ 5:67 ——Scope of relief from stay hearings specifically limited
§ 5:68 ——Lack of adequate protection as “cause”
§ 5:69 ——Other grounds
§ 5:70 —Equity in property not necessary for effective reorganization
§ 5:71 —Single asset real estate cases
§ 5:72 Value of collateral considered
§ 5:73 —Interest not granted to under-secured creditor
§ 5:74 Relief from stay for litigation to continue in another court
§ 5:75 —Resolution of issues
§ 5:76 —Connection with or interference with pending bankruptcy case
§ 5:77 —Debtor serves as fiduciary in other tribunal
§ 5:78 —Specialized expertise within tribunal
§ 5:79 —Insurance coverage

- § 5:80 —Third party action
- § 5:81 —Interests of creditors
- § 5:82 —Equitable subordination
- § 5:83 —Judicial lien
- § 5:84 —Interests in judicial economy
- § 5:85 —Trial readiness
- § 5:86 —Balance between stay and harm in lifting stay

C. PROPERTY OF BANKRUPTCY ESTATE

- § 5:87 Generally
- § 5:88 Modification to individual Chapter 11 debtor's property
- § 5:89 Scheduled
- § 5:90 Unscheduled
- § 5:91 Exempt
- § 5:92 Expansion of property to be claimed as a "homestead exemption"
- § 5:93 Clarification of retirement funds to be exempt
- § 5:94 Limitation on luxury goods
- § 5:95 Limitation on homestead exemption
- § 5:96 Abandoned

D. DISCHARGE AND DISCHARGEABILITY OF DEBTS

- § 5:97 Generally
- § 5:98 Duration of discharge
- § 5:99 Denial of discharge
- § 5:100 Failure of debtor to receive credit counseling
- § 5:101 Delay of discharge
- § 5:102 Denial of discharge—Grounds
- § 5:103 —Objections to discharge
- § 5:104 —Revocation of discharge
- § 5:105 Effect of discharge
- § 5:106 —Debts discharged
- § 5:107 —Judgments voided
- § 5:108 —Effect on prior liens
- § 5:109 —Creditors enjoined
- § 5:110 Nondischargeability of specific debts
- § 5:111 Nondebt obligations

E. CLAIMS AND DISTRIBUTION OF PROPERTY OF ESTATE

- § 5:112 Generally
- § 5:113 Filing proof of claim or interest

TABLE OF CONTENTS

- § 5:114 —When to file and necessity of filing a claim pursuant to 11 U.S.C.A. § 503(b)(9)
- § 5:115 —When to file and necessity of filing—Claims in Chapter 7, 12, and 13 cases
- § 5:116 ——Insufficient assets
- § 5:117 —Chapter 11 cases
- § 5:118 ——Where to file claims
- § 5:119 —Schedules' examination essential
- § 5:120 —Jurisdictional effect of filing
- § 5:121 —Jury trial
- § 5:122 Allowance of claims
- § 5:123 —Burden of proof
- § 5:124 Secured claims
- § 5:125 —Validity and extent of lien
- § 5:126 —“Strip down” of lien
- § 5:127 Priority claims
- § 5:128 Distribution of property of estate
- § 5:129 Offset of mutual debts

F. EXEMPTIONS

- § 5:130 Generally
- § 5:131 Claims of exemptions
- § 5:132 Federal versus state exemptions
- § 5:133 Objection to exemptions
- § 5:134 Avoiding liens on personal property
- § 5:135 —Determining exempt property date
- § 5:136 —Limitation
- § 5:137 ——Lien fixed on homestead under divorce decree
- § 5:138 —“Impairment”

G. REDEMPTION OF TANGIBLE PERSONAL PROPERTY

- § 5:139 Generally

H. RECLAMATION OF GOODS

- § 5:140 Generally
- § 5:141 Bankruptcy code recognition of UCC rights
- § 5:142 —Necessity of written demand
- § 5:143 ——Creditor or counsel may submit written demand
- § 5:144 —Requisites for valid reclamation claim
- § 5:145 Reclamation rights expanded
- § 5:146 Effect of failure to make written reclamation demand
- § 5:147 Bankruptcy code recognition of UCC rights—
Alternative rights of prepetition secured interests

- § 5:148 —Superior rights of prepetition secured interests
- § 5:149 ——Reclamation claim may be extinguished
- § 5:150 ——Courts readily accept that reclamation claims are “valueless” where secured creditor has an undersecured “floating lien”

I. 20 DAY ADMINISTRATIVE CLAIMS

- § 5:151 20-day administrative claim better than reclamation rights
- § 5:152 Notice and hearing required

J. REAFFIRMATION OF DEBTS

- § 5:153 Generally
- § 5:154 Disclosure requirements for reaffirmation agreements

K. AVOIDING POWERS OF BANKRUPTCY TRUSTEE

1. Introduction

- § 5:155 Generally

2. Preferential Transfers

- § 5:156 Generally
- § 5:157 Statute of Limitations
- § 5:158 Elements of preference
- § 5:159 Transfer
- § 5:160 To or for benefit of creditor
- § 5:161 —Improvement in position test
- § 5:162 Insolvency of debtor
- § 5:163 Preference period
- § 5:164 Consequences of transfer

3. Effective Date of Transfer

- § 5:165 Generally
- § 5:166 Intent of parties
- § 5:167 Perfection
- § 5:168 —Personal property transfers
- § 5:169 —Real property transfers
- § 5:170 —Transfers by check
- § 5:171 Date of filing of petition
- § 5:172 Delivery and risk of loss

4. Defenses to Preference Claim

- § 5:173 Generally

TABLE OF CONTENTS

§ 5:174	Contemporaneous exchange for new value
§ 5:175	—Court to determine what is contemporaneous
§ 5:176	Court sets criteria to determine what is contemporaneous
§ 5:177	Criteria must exist to establish contemporaneous exchange for new value
§ 5:178	Contemporaneous exchange for new value—Court to consider intent of parties
§ 5:179	Ordinary course of business or financial affairs
§ 5:180	—Objective industry test
§ 5:181	—Subjective test
§ 5:182	—Test for what is ordinary
§ 5:183	—Modification to test for ordinary under the BAPCPA
§ 5:184	—Long-term debt payments
§ 5:185	—Debt restructuring (extended payments) agreement
§ 5:186	Purchase money security interests shielded from preference attack
§ 5:187	Expansion of protection for purchase money security agreements
§ 5:188	New value given to or for the benefit of the debtor
§ 5:189	New value given—Real economic value to debtor must exist for “new value” defense to stand
§ 5:190	—Inventory and receivables
§ 5:191	—Statutory liens
§ 5:192	—Alimony, maintenance, and support
§ 5:193	—Consumer debts
§ 5:194	New value given—Small transfers protected
§ 5:195	New value given—State agency immunity
5. Voidable Transactions and Fraudulent Transfers	
§ 5:196	Generally
§ 5:197	Transfers made and obligations incurred with actual intent to defraud
§ 5:198	Transfers made and obligations incurred for less than reasonably equivalent value
§ 5:199	—“Reasonably equivalent value” defined
§ 5:200	Good faith transferees and obligees
§ 5:201	Perfection of transfer
§ 5:202	State law
6. “Strong Arm Clause”	
§ 5:203	Generally
§ 5:204	Trustee as hypothetical lien creditor
§ 5:205	Trustee as hypothetical creditor with unsatisfied execution

- § 5:206 Trustee as hypothetical bona fide purchaser
- § 5:207 Trustee as successor to actual unsecured creditor
- § 5:208 —Unsecured creditor must be actual, not hypothetical
- § 5:209 Post-petition transfers

7. Liability of Transferee of Avoided Transfer

- § 5:210 Generally
- § 5:211 Recovery of property or its value
- § 5:212 —Initial transferee
- § 5:213 —Immediate or mediate transferee
- § 5:214 Lien of good faith transferee

III. CREDITORS' STRATEGIES AND TACTICS

A. BEFORE BANKRUPTCY PETITION FILED

- § 5:215 Generally
- § 5:216 Investigate debtor's financial condition
- § 5:217 Consider abandoning collection efforts
- § 5:218 —Debtor with no nonexempt property
- § 5:219 —Other creditors with priority claims or liens
- § 5:220 Consider actively seeking collection
- § 5:221 —Pursue prejudgment remedies
- § 5:222 —Prosecute civil action to judgment
- § 5:223 —Enforce judgment
- § 5:224 Consider involuntary bankruptcy petition as option
- § 5:225 Negotiate with debtor
- § 5:226 —“Judgment proof” debtor
- § 5:227 —Risk of preferential transfers
- § 5:228 Consider accepting settlement offer despite risk of avoidance
- § 5:229 —Transfer may not ultimately be avoided
- § 5:230 —Preference action may be settled
- § 5:231 Methods to reduce risk of avoidance
- § 5:232 —Avoid precipitating bankruptcy case
- § 5:233 —Avoid consequences of “controlling” debtor
- § 5:234 —Obtain payments from third-party sources
- § 5:235 —Assist debtor in avoiding bankruptcy
- § 5:236 —Maximize payments in “ordinary course of business”
- § 5:237 —Credit debtor for full value of property
- § 5:238 —Release of claims

B. AFTER BANKRUPTCY PETITION FILED

- § 5:239 Generally

TABLE OF CONTENTS

- § 5:240 Preliminary investigation
- § 5:241 —Initial fact gathering
- § 5:242 —Information to be sought
- § 5:243 —Review of petition, lists, schedules, and statement of financial affairs
- § 5:244 —Request for notice
- § 5:245 —Chapter 11 cases
- § 5:246 —Procedure
- § 5:247 Creditors' meeting
- § 5:248 —Election of trustee and selection of creditors' committee
 - § 5:249 —Procedure for election of trustee
 - § 5:250 —Procedure for selection of creditors' committee
- § 5:251 Court expanded powers to modify a creditors' committee
- § 5:252 Creditors' meeting—Examination of debtor
 - § 5:253 —Scope of examination
 - § 5:254 —Fifth amendment immunity
 - § 5:255 —Federal common law privileges
- § 5:256 —Organizational meeting of creditors called by United States Trustee
- § 5:257 Filing and voting proof of claim
- § 5:258 Action against debtor
- § 5:259 Grounds for dismissal or conversion or appointment of trustee
- § 5:260 Action against debtor—Sanctions for bad faith filings
- § 5:261 Retention of bankruptcy counsel

IV. INVOLUNTARY BANKRUPTCY PETITION

A. INTRODUCTION

- § 5:262 Generally

B. ALTERNATIVES TO INVOLUNTARY BANKRUPTCY PETITION

- § 5:263 Generally
- § 5:264 Litigation
- § 5:265 Workouts
 - § 5:266 —Less expensive than bankruptcy
 - § 5:267 —All creditors must consent
 - § 5:268 Assignment for benefit of creditors
 - § 5:269 —Assignee similar to bankruptcy trustee
 - § 5:270 —Effect on secured creditors
 - § 5:271 —Priority of distribution

C. DECIDING WHETHER TO FILE INVOLUNTARY PETITION

- § 5:272 Generally
- § 5:273 Advantages for creditors
 - Transfers may be set aside
 - Recovery of preferential and fraudulent transfers
 - Avoidance of other transfers
 - Attachment liens terminate
 - Debtor's primary assets outside creditors' reach
 - Exempt status
 - Court control of assets
 - Fees and expenses recoverable by petitioning creditors
 - Receiverships terminate
 - Ability to oust debtor's management
 - Liquidating debtor may be recognized or sold as "going concern"
 - Lease obligations
 - Assumption/assignment of valuable leases
 - Rejection of burdensome leases
 - Overriding state law
 - Obtaining distribution priority
 - Interest accrual on unsecured or undersecured claims halted
 - Forced sale of debtor's interest in residence and other real property
 - Ability to force sale of co-owner's interest
 - Automatic stay
 - Claims of shareholders and creditors subordinated
 - Debtor's exemptions limited by fixing debtor's domicile
 - Prevents marshalling by junior lienholder and resulting prejudice to unsecured creditors
 - Prevents change in domicile and conversion of nonexempt property into exempt property
- § 5:298 Disadvantages
- § 5:299 Contested cases; Cost and time factors
- § 5:300 Conversion of case
- § 5:301 Petitioning creditors receive no preferential treatment
- § 5:302 Ineffective against judgment proof debtors
- § 5:303 Exempt assets; Burden of proof
- § 5:304 Liability for threat of involuntary petition
- § 5:305 Actual intent excepted

TABLE OF CONTENTS

D. DEBTORS SUBJECT TO INVOLUNTARY PETITION

§ 5:306	Generally
§ 5:307	Any debtor eligible to file voluntary Chapter 7 or 11
§ 5:308	—Debtors excluded under Chapter 7
§ 5:309	—Railroads, insurance companies, banks and the like
§ 5:310	—Additional debtors excluded under Chapter 11
§ 5:311	—Stockbrokers and commodity brokers
§ 5:312	—Railroad may be included under Chapter 11 but not under Chapter 7
§ 5:313	—Individuals and family farmers with previously-dismissed petitions
§ 5:314	—Joint debtor spouses excluded
§ 5:315	—Disposing of joint involuntary petitions
§ 5:316	—Governmental units excluded
§ 5:317	—Additional debtors excluded under an involuntary Chapter 11—Farmers, family farmers, family fishermen and non-for-profit corporations excluded
§ 5:318	—Farmers, family farmers, family fishermen, and non-for-profit corporations excluded—Farmers
§ 5:319	—Fishermen
§ 5:320	—Farmers—Farming operations income
§ 5:321	—Farmers, family farmers, and non-for-profit corporations excluded—Farmers—Debtor not farmer on date petition filed
§ 5:322	—Farmers, family farmers, family fishermen, and non-for-profit corporations excluded—Family farmers
§ 5:323	—Farmers, family farmers, and non-for-profit corporations excluded—Family farmers—Individuals
§ 5:324	—Farmers, family farmers, family fishermen, and non-for-profit corporations excluded—Family farmers—Partnership
§ 5:325	—Farmers, family farmers, and non-for-profit corporations excluded—Family farmers—Corporations
§ 5:326	—Family fishermen
§ 5:327	—Farmers, family farmers, family fishermen and non-for-profit corporations excluded—Family fishermen—Individuals
§ 5:328	—Farmers, family farmers, family fishermen, and non-for-profit corporations excluded—Family fisherman—Partnership
§ 5:329	—Family farmers—Corporations

- § 5:330 — —Not-for-profit corporations
- § 5:331 —Burden on debtor to raise ineligible status

E. CREDITORS WHO MAY FILE INVOLUNTARY PETITION

- § 5:332 Generally
- § 5:333 Required number of creditors
- § 5:334 —Certain creditors not counted
- § 5:335 —Employees, insiders, and transferees of voidable transfers
- § 5:336 — —Rationale
- § 5:337 — —Employees, insiders, and transferees of voidable transfers acting as petitioners
- § 5:338 —Creditors holding contingent claims and claims in bona fide dispute
- § 5:339 — —Alter ego claims
- § 5:340 —Creditors holding de minimis claims
- § 5:341 — —De minimis claim amounts
- § 5:342 —Creditors counted, not number of claims held
- § 5:343 —Not jurisdictional, may be waived by debtor
- § 5:344 —Standing to object to sufficiency of number of petitioning creditors
- § 5:345 Required amount and character of petitioning creditors' claim
 - § 5:346 —Unsecured claims aggregating \$21,050
 - § 5:347 — —Partially secured claims
 - § 5:348 — —Fully secured claims
 - § 5:349 — —Waiver of security
 - § 5:350 — —Creditor secured by nondebtor's property
 - § 5:351 —Claims must not be contingent as to liability or subject to bona fide dispute
 - § 5:352 Stricter requirements for creditors under BAPCPA
 - § 5:353 Fraudulent involuntary is bankruptcy fraud
 - § 5:354 Required amount and character of petitioning creditors' claim—Claims must not be contingent as to liability or subject to bona fide dispute—Defenses, offsets, and counterclaims
 - § 5:355 — —Tort claims
 - § 5:356 — —Endorsers' liability
 - § 5:357 — —Guarantees
 - § 5:358 — —Claims reduced to judgment
 - § 5:359 — —Claims acquired for purpose of filing
 - § 5:360 Post-filing joinder of other creditors
 - § 5:361 —Purpose
 - § 5:362 —Insufficient number of petitioning creditors

TABLE OF CONTENTS

§ 5:363	—Unqualified original petitioning creditors
§ 5:364	—Original petition filed in bad faith
§ 5:365	—Procedure for joinder of other creditors
§ 5:366	—Before answer filed
§ 5:367	—During trial
§ 5:368	—Joinder beyond court-ordered deadline
§ 5:369	—Special rules for partnerships
§ 5:370	—Any general partner may file
§ 5:371	—Limited partners may not file
§ 5:372	—Where relief ordered against all general partners, any general partner, trustee of a general partner, or creditor of partnership may file
§ 5:373	—Voluntary petitions
§ 5:374	—All general partners must consent
§ 5:375	—Involuntary petition against general partner
§ 5:376	—Standing of nonfiling partners to request dismissal

F. PROCEDURE

1. Introduction

§ 5:377	Generally
---------	-----------

2. Jurisdiction and Venue

§ 5:378	Generally
§ 5:379	Individuals
§ 5:380	Corporations
§ 5:381	Partnerships
§ 5:382	Other entities

3. Filing Petition

§ 5:383	Generally
§ 5:384	Contents of petition
§ 5:385	Where to file
§ 5:386	—Southern District cases
§ 5:387	—Western District cases
§ 5:388	—Eastern District cases
§ 5:389	—Northern District cases
§ 5:390	Electronic filing
§ 5:391	Copies
§ 5:392	Filing fee
§ 5:393	Recording petition

4. Summons

§ 5:394	Generally
---------	-----------

- § 5:395 Issuance
- § 5:396 Manner of service
- § 5:397 Proof of service
- § 5:398 —Local rules

5. Default

- § 5:399 Generally
- § 5:400 Entry of order of relief

6. Responsive Pleadings

- § 5:401 Generally
- § 5:402 Standing to contest petition
- § 5:403 Motion
- § 5:404 Answer
- § 5:405 —Attorney's fees claim
- § 5:406 —No counterclaim against petitioning creditor except to defeat petition
- § 5:407 —Counterclaims against non-petitioning creditor
- § 5:408 —Timely response due
- § 5:409 Jury trial demand by debtor/non-petitioning general partner

G. DISCOVERY

- § 5:410 Generally

H. TRIAL

- § 5:411 Generally
- § 5:412 Certain adversary proceeding rules apply
- § 5:413 —Inapplicable rules
- § 5:414 Court discretion in allowing jury trial

I. GROUNDS FOR RELIEF

- § 5:415 Generally
- § 5:416 Generally not paying debts
- § 5:417 —Relevant factors
- § 5:418 —Evidence considered
- § 5:419 —Post-petition payments
- § 5:420 —Borrowing to pay debts
- § 5:421 —Defaulting to major creditors
- § 5:422 —Failure to pay single creditor
- § 5:423 —“Special circumstances” doctrine
- § 5:424 Custodian appointed within preceding 120 days

J. PROCEDURE AFTER ORDER FOR RELIEF

- § 5:425 Generally

TABLE OF CONTENTS

§ 5:426	Lists, schedules, and statement of financial affairs
§ 5:427	List of largest unsecured creditors
K. PROTECTIONS FOR DEBTOR IN INVOLUNTARY CASES	
1. Introduction	
§ 5:428	Generally
2. No Order for Relief Until Trial	
§ 5:429	Generally
§ 5:430	Protection of automatic stay
§ 5:431	Order “relates back” to petition
3. Debtor Remains in Possession	
§ 5:432	Generally
4. Gap Claims	
§ 5:433	Generally
§ 5:434	Special priority
5. Debtor’s Absolute Right to Convert Chapter 7 Liquidation to Other Chapters	
§ 5:435	Generally
6. Debtor’s Right to Compensation If Petition Is Dismissed	
§ 5:436	Generally
§ 5:437	Costs and reasonable attorney’s fees
§ 5:438	—Inapplicable to abstention
§ 5:439	Damages for bad faith petitions
§ 5:440	—Damages proximately caused by filing
§ 5:441	—Punitive damages
§ 5:442	—What constitutes “bad faith”
§ 5:443	— —Objective test
§ 5:444	— —Bankruptcy Rule 9011
§ 5:445	—Damages against petitioner’s attorney
§ 5:446	Remedies cumulative
§ 5:447	—Sanctions and other causes of action
§ 5:448	—Procedural limitations
7. Creditors’ Bond May Be Required	
§ 5:449	Generally
§ 5:450	Factors considered

**L. APPOINTMENT OF INTERIM TRUSTEE;
INVOLUNTARY CHAPTER 7 CASES**

- § 5:451 Generally
- § 5:452 Motion procedure
- § 5:453 —Grounds
- § 5:454 —Bond required
- § 5:455 —Appointment order
- § 5:456 —Procedure for appointment
- § 5:457 No automatic removal on conversion of case
- § 5:458 Turnover of property to trustee and final report
- § 5:459 Debtor's posting of bond to preclude appointment

M. DISMISSAL OF INVOLUNTARY CASE

1. Introduction

- § 5:460 Generally

2. Upon Petitioning Creditors' Request

- § 5:461 Generally
- § 5:462 Notice and hearing required
- § 5:463 Motion of petitioner
- § 5:464 Consent of all petitioners and debtor
- § 5:465 Want of prosecution
- § 5:466 Order for relief precludes consensual dismissal
- § 5:467 Standing to oppose dismissal

3. Other Dismissals

- § 5:468 Generally

4. Effect of Dismissal

- § 5:469 Generally

5. Abstention

- § 5:470 Generally
- § 5:471 Court's discretion
- § 5:472 Comment

6. Motion to Vacate Order for Relief

- § 5:473 Generally
- § 5:474 Dismissal of case distinguished
- § 5:475 Standing to file motion to vacate order for relief
- § 5:476 Grounds
- § 5:477 —Defenses
- § 5:478 Certain adversary proceeding rules apply

TABLE OF CONTENTS

V. FORMS

- § 5:479 Proof of Claim Form—Form 5-1
- § 5:480 Involuntary Petition Form—Form 5-2
- § 5:481 Summons to debtor in involuntary case—Southern District of New York[Manhattan] White Plains and Poughkeepsie will differ slightly—Form 5-3
- § 5:482 Plan of reorganization in small business case—Form 5-4
- § 5:483 Disclosure statement in small business case—Form 5-5

**CHAPTER 6. JUDGMENTS GENERALLY,
LIENS, AND EXECUTIONS ON REAL
PROPERTY**

I. INTRODUCTION

A. GENERAL CONSIDERATIONS

- § 6:1 Generally

B. STATUTORY PROVISIONS

1. Introduction

- § 6:2 Generally

2. Enforcing Federal Court Judgments

- § 6:3 Generally
- § 6:4 Money judgments
- § 6:5 —Enforcing officers
- § 6:6 —Exceptional circumstances must be shown to exist for extraordinary methods
- § 6:7 —State law procedures govern
- § 6:8 —Exception
- § 6:9 —Stay of enforcement
- § 6:10 —Discovery
- § 6:11 —Scope should be broad
- § 6:12 —Bankruptcy trustee
- § 6:13 —Nondischargeable judgments against bankruptcy debtor
- § 6:14 Nonmoney judgments

C. DEFINITION AND CONTENT OF JUDGMENT

- § 6:15 Generally

ENFORCING JUDGMENTS

- § 6:16 Entry of judgment
- § 6:17 —Judgment upon verdict
- § 6:18 —Judgment by decision
- § 6:19 —After death of party
- § 6:20 —Interlocutory
- § 6:21 Judgment roll
- § 6:22 —Contents of judgment roll
- § 6:23 ——Additional items required under certain conditions

D. DOCKETING OF ORIGINAL JUDGMENT

- § 6:24 Generally
- § 6:25 Transcript of judgment
- § 6:26 —Original court
- § 6:27 —Additional county
- § 6:28 —Court of the United States
- § 6:29 Form of docketing
- § 6:30 —Surname of judgment debtor
- § 6:31 —Surname of every other judgment debtor

E. CORRECTION OF JUDGMENT AND AMENDMENT OF DOCKET

- § 6:32 Generally
- § 6:33 Substantial right of party affected
- § 6:34 Subsequent judgment or order affecting judgment or lien
- § 6:35 Change in judgment creditor
- § 6:36 Certificate of county clerk

F. SATISFACTION PIECE

- § 6:37 Generally

II. ENFORCEMENT OF MONEY JUDGMENTS OR ORDERS GENERALLY

- § 6:38 Generally
- § 6:39 Enforcement of judgment or order awarding possession of real property or chattel
- § 6:40 —Enforcement directing sale of real property
- § 6:41 ——Mode of sale
- § 6:42 ——Place of sale
- § 6:43 ——Security
- § 6:44 Enforcement by means other than Article 52

TABLE OF CONTENTS

§ 6:45	Alternative enforcement of judgment or order
§ 6:46	Appointment of receiver
§ 6:47	Amount recoverable under judgment
§ 6:48	—Pre-judgment interest
§ 6:49	—Rate
§ 6:50	—Nine percent rate not retroactive
§ 6:51	—Federal court judgments compared
§ 6:52	—Computation of interest in determining full judgment amount
§ 6:53	—Entitlement to prejudgment interest
§ 6:54	—Liquidated contract claims
§ 6:55	—Interest rates
§ 6:56	—When interest commences
§ 6:57	—Federal court judgments compared
§ 6:58	—How interest is calculated
§ 6:59	—Interest specified
§ 6:60	—Post-verdict/decision interest
§ 6:61	—Federal court judgments compared
§ 6:62	—Interest awarded on costs, expenses, and counsel fees
§ 6:63	—Post-judgment interest
§ 6:64	—Judgments rendered in other states
§ 6:65	—Costs of suit and enforcement of judgment
§ 6:66	—Recoverable disbursements and additional allowances
§ 6:67	—Other “reasonable and necessary” expenses discretionary
§ 6:68	—Attorneys’ fee awards
§ 6:69	—Statutory allowance of attorney’s fees
§ 6:70	—Medical, dental, or podiatric malpractice actions
§ 6:71	—Actions against state
§ 6:72	Distribution of amount recovered under judgment
§ 6:73	—Priority among execution creditors
§ 6:74	—Same enforcing officer
§ 6:75	—Different enforcing officers
§ 6:76	—Support judgments
§ 6:77	—Priority of other judgment creditors
§ 6:78	—Two or more judgment creditors
§ 6:79	—Priority lapses after sixty days

III. PROPERTY SUBJECT TO ENFORCEMENT PROCEDURES

§ 6:80	Generally
--------	-----------

ENFORCING JUDGMENTS

- § 6:81 Debts, past due or to become due
- § 6:82 Property of debtor, present or future
- § 6:83 —Debtor's property held by third parties
- § 6:84 —Escrow amounts subject to attachment
- § 6:85 ——Attorney IOLA accounts
- § 6:86 Joint debtors
- § 6:87 Particular property or debt
- § 6:88 —Exempt property
- § 6:89 —Nonassignable interests
- § 6:90 ——Personal injury claims
- § 6:91 ——Legal malpractice claims
- § 6:92 ——Licenses
- § 6:93 ——Leasehold interests
- § 6:94 —Assignable interests
- § 6:95 ——Exceptions
- § 6:96 ——Interest in trust
- § 6:97 ——Transfer from one form of trust to another
form of trust does not necessarily impact exemption
- § 6:98 ——Pending lawsuits
- § 6:99 ——Procedure
- § 6:100 ——Debtor's rights in collateral
- § 6:101 Transferred property still subject to enforcement
- § 6:102 —Property which is a voidable transaction
- § 6:103 —Voidable transaction will destroy trust exemption
- § 6:104 Joint tenancy and tenancy in common property
- § 6:105 —Partition not affected by levy and execution
- § 6:106 ——Effect on joint tenancy property

IV. STAYING ENFORCEMENT OF JUDGMENT

- § 6:107 Generally
- § 6:108 New York court judgments
- § 6:109 Foreign judgments with security
- § 6:110 Foreign judgments where security is not furnished

V. CREATING ENFORCEMENT OF JUDGMENT PLANS

A. INTRODUCTION

- § 6:111 Generally

B. PURPOSE

- § 6:112 Generally
- § 6:113 Locating assets

TABLE OF CONTENTS

- § 6:114 Judicial liens
- § 6:115 —Challenging civil forfeiture
- § 6:116 Selecting proper enforcement method
- § 6:117 —Personal property execution
- § 6:118 —Real property judgment liens and personal property judgment levies
- § 6:119 —Real property executions
- § 6:120 —Wage garnishment
- § 6:121 —Special enforcement procedures

VI. JUDGMENT LIENS ON REAL PROPERTY

A. PRACTICAL CONSIDERATIONS

- § 6:122 Generally
- § 6:123 All real property interest affected
- § 6:124 Lien attaches to after-acquired property
- § 6:125 —Effect on intervening bankruptcy
- § 6:126 —Time that lien on after-acquired property becomes effective
- § 6:127 Fast and inexpensive
- § 6:128 —Limitation regarding judgments against national banks
- § 6:129 Lien more likely to become “seasoned”
- § 6:130 —Bankruptcy preference period may expire
- § 6:131 —Lien may still be avoided

B. REAL PROPERTY INTERESTS SUBJECT TO JUDGMENT LIEN

- § 6:132 Generally
- § 6:133 Future rental payments to be made to debtor not generally subject to lien
- § 6:134 —Manner to procure rental payments
- § 6:135 —Notice of levy
- § 6:136 —Receiver
- § 6:137 —Payment order
- § 6:138 Contingent interests
- § 6:139 Homesteads
- § 6:140 —Homestead exemption lapse
- § 6:141 Property transferred before entry of judgment excepted
- § 6:142 —Property fraudulently transferred
- § 6:143 —Bona fide purchaser
- § 6:144 Redemption rights
- § 6:145 Joint tenancy property

ENFORCING JUDGMENTS

§ 6:146 —Levy and sale terminates tenancy

C. CREATION OF JUDGMENT LIEN

§ 6:147 Generally
§ 6:148 Supreme, county, or family court judgment
§ 6:149 Judgments in courts other than Supreme, county, or family court
§ 6:150 —Property in several counties
§ 6:151 ——Title search can verify proper docketing of lien
§ 6:152 Judgments obtained in federal court
§ 6:153 —Judgment favoring the United States government
§ 6:154 Sister state judgments distinguished
§ 6:155 Effects of defects in judgment
§ 6:156 —Mere irregularity not fatal
§ 6:157 —Ministerial error not fatal

D. NOTICE OF LIEN

§ 6:158 Generally

E. DURATION OF REAL PROPERTY JUDGMENT LIEN

§ 6:159 Generally
§ 6:160 Exceptions
§ 6:161 Changes in duration
§ 6:162 —Extension of lien upon court order
§ 6:163 —Extension of lien by statute
§ 6:164 —Release of lien prior to ten years
§ 6:165 ——Twenty-year period for enforcement of judgment
§ 6:166 Levy after expiration of ten years
§ 6:167 —Real property description
§ 6:168 Renewal of judgment lien
§ 6:169 Effect of property transferred before lien extended or renewed
§ 6:170 Property transferred subject to real property judgment lien

VII. JUDICIAL SALE FOR ENFORCEMENT OF MONEY JUDGMENT

A. TRANSFER OR PAYMENT OF PROCEEDS FROM JUDICIAL SALE

§ 6:171 Generally
§ 6:172 Exceptions

TABLE OF CONTENTS

- § 6:173 —Prior docketed judgment or execution and notice of levy
- § 6:174 —Mortgage lien
- § 6:175 —Bona fide purchaser
- § 6:176 —Judgment after death
- § 6:177 —Municipalities
- § 6:178 —Lien nullified

B. RELEASE OF REAL PROPERTY JUDGMENT LIEN

- § 6:179 Generally
- § 6:180 Voluntary release or subordination
- § 6:181 Contents
- § 6:182 Affects only debtors named in release or subordination
- § 6:183 Satisfaction upon recording

VIII. REAL PROPERTY EXEMPT FROM ENFORCEMENT OF MONEY JUDGMENTS

A. INTRODUCTION

- § 6:184 Generally
- § 6:185 Exemptions strictly statutory
- § 6:186 Impact of bankruptcy code exemptions
- § 6:187 —Federal deference to state law
- § 6:188 —New York has opted out
- § 6:189 Exemptions waived if not timely claimed

B. “HOMESTEAD” EXEMPTION

- § 6:190 Generally
- § 6:191 Burying ground

C. HOMESTEAD EXEMPTION AFTER OWNER’S DEATH

- § 6:192 Generally

D. HOMESTEAD MUST BE ACTUAL RESIDENCE OF JUDGMENT DEBTOR

- § 6:193 Generally
- § 6:194 —Temporary non-occupation permissible

E. DOLLAR LIMITS TO EXCEPTION

§ 6:195 Generally

F. SALE OF HOMESTEAD EXCEEDING THE LIMITS AS DETAILS IN CPLR 5206(A)

§ 6:196 Generally

§ 6:197 Sale subject to court approval

§ 6:198 —Notice of petition required

§ 6:199 —Service may be directed

§ 6:200 —Sale proceeds monitored by court

§ 6:201 —Sale proceeds paid to judgment debtor exempt

G. BURYING GROUND

§ 6:202 Generally

§ 6:203 Actual use as burial ground

§ 6:204 Size restriction

§ 6:205 Only specific buildings or structures permitted

H. NO HOMESTEAD EXEMPTION FOR PURCHASE PRICE DEBT

§ 6:206 Generally

I. NO HOMESTEAD EXEMPTION FOR TAX DEBT

§ 6:207 Generally

J. NO HOMESTEAD EXEMPTION FOR HOUSE PURCHASED WITH CONVERTED FUNDS

§ 6:208 Generally

IX. ADVERSE CLAIMS

A. INTRODUCTION

§ 6:209 Generally

B. PURPOSE

§ 6:210 Generally

C. WHEN ADVERSE CLAIM PROCEDURES MAY BE USED

§ 6:211 Generally

TABLE OF CONTENTS

- § 6:212 Claims of real property ownership or possession
- § 6:213 Equitable right of property

D. PROCEDURE

- § 6:214 Generally
- § 6:215 Specific service required
- § 6:216 Proper court
- § 6:217 —City court of any city outside City of New York or in county court of that county
- § 6:218 —District court
- § 6:219 —Civil court of City of New York
- § 6:220 —Supreme court or county court

E. ALTERNATIVES TO THIRD PARTY CLAIM PROCEDURE

- § 6:221 Generally
- § 6:222 Injunction
- § 6:223 Suit to recover possession
- § 6:224 Quiet title action
- § 6:225 Suit for damages
- § 6:226 Declaratory judgment
- § 6:227 Intervention in examination proceeding
- § 6:228 Temporary restraining order to prevent sale pending hearing

X. EXECUTION, LEVY, AND SALE OF REAL PROPERTY TO ENFORCE JUDGMENT

A. INTRODUCTION

- § 6:229 Generally

B. EXECUTION

- § 6:230 Generally
- § 6:231 Information to be included in execution
- § 6:232 Specific direction regarding judgment debtor's property interests
- § 6:233 Transcript information to be included
- § 6:234 Jurisdiction based upon levy on property or debt pursuant to order of attachment
- § 6:235 Mortgage debt basis

C. ISSUANCE OF EXECUTION

- § 6:236 Generally

ENFORCING JUDGMENTS

- § 6:237 Issued by clerk of court or judgment creditor attorney
- § 6:238 Issued by support collection unit

D. RETURN OF EXECUTION

- § 6:239 Generally
- § 6:240 Exceptions
- § 6:241 Extension

E. RECORDS KEPT BY SHERIFF OR SUPPORT COLLECTION UNIT

- § 6:242 Generally
- § 6:243 Sale of real property
- § 6:244 Time of sale by public auction
- § 6:245 —Postponement of sale
- § 6:246 ——Notice
- § 6:247 ——Parties to receive notice of postponed date
- § 6:248 ——Manner of service of notice of postponed date
- § 6:249 Manner of sale
- § 6:250 Mortgaged property
- § 6:251 Notice of sale
- § 6:252 —List of necessary parties to be delivered by judgment creditor
- § 6:253 —Service of notice of sale on judgment debtor
- § 6:254 —Service of notice of sale on other necessary parties
- § 6:255 —Timeliness of notice of sale
- § 6:256 —Publication of notice of sale
- § 6:257 ——Effect of faulty notice

F. EFFECT OF NOTICE AS AGAINST OTHER JUDGMENT CREDITORS

- § 6:258 Generally
- § 6:259 Resort only to judgment debtor

G. PROOFS OF PUBLICATION, SERVICE, AND POSTING OF NOTICE OF SALE

- § 6:260 Generally

H. CONVEYANCE OF RIGHT, TITLE, AND INTEREST OF PROPERTY SOLD

- § 6:261 Generally

I. DISPOSITION OF PROCEEDS OF SALE

- § 6:262 Generally

TABLE OF CONTENTS

- § 6:263 Distribution to judgment creditors
- § 6:264 Order of priority of distribution
- § 6:265 Excess to debtor

J. FAILURE OF TITLE TO PROPERTY SOLD

- § 6:266 Generally
- § 6:267 Effect on original executing judgment creditor
- § 6:268 No notice of motion required by judgment creditors

K. DIRECTIONS TO SHERIFF

- § 6:269 Generally
- § 6:270 Motion on notice required

XI. FORMS

- § 6:271 Judgment upon decision of court—Form 6-1
- § 6:272 Notice of motion for final judgment after entry of interlocutory judgment—Form 6-2
- § 6:273 Final judgment after entry of interlocutory judgment—Form 6-3
- § 6:274 Notice of motion for extension of lien of money judgment upon real property—Form 6-4
- § 6:275 Affidavit in support of motion for extension of lien of money judgment upon real property—Form 6-5
- § 6:276 Order extending lien of money judgment upon real property—Form 6-6
- § 6:277 Notice of petition in special proceeding for sale of homestead exceeding statutory limits of the homestead exemption in value—Form 6-7
- § 6:278 Petition in special proceeding for sale of homestead exceeding statutory limits of the homestead exemption in value—Form 6-8
- § 6:279 Judgment in special proceeding for sale of homestead exceeding the statutory limits of the homestead exemption in value—Form 6-9
- § 6:280 Notice of petition in special proceeding to determine adverse claim—Form 6-10
- § 6:281 Order to show cause in special proceeding to determine adverse claim—Form 6-11
- § 6:282 Petition in special proceeding to determine adverse claim—Form 6-12
- § 6:283 Judgment in special proceeding to determine adverse claim—Form 6-13
- § 6:284 Execution-general form—Form 6-14
- § 6:285 Return of execution—Form 6-15

ENFORCING JUDGMENTS

- § 6:286 Request for notification of postponement of sale—
Form 6-16
- § 6:287 Notice of postponement of sale of real property—
Form 6-17
- § 6:288 Notice of sale of real property—Form 6-18
- § 6:289 Affidavit of posting of notice of sale of real property—
Form 6-19
- § 6:290 Sheriff's certificate of proof of service of notice of
sale—Form 6-20
- § 6:291 Affidavit of proof of publication of notice of sale of
real property—Form 6-21
- § 6:292 Order to show cause why sheriff's sale should not be
vacated on ground of irregularity—Form 6-22
- § 6:293 Affidavit in support of motion to vacate sheriff's sale
on ground of irregularity—Form 6-23
- § 6:294 Order vacating sheriff's sale on ground of
irregularity—Form 6-24
- § 6:295 Affidavit in support of motion to restore lien of
judgment creditor after sheriff's sale vacated for
irregularity and purchase money recovered by
purchaser—Form 6-25
- § 6:296 Order restoring lien of judgment creditor after
sheriff's sale vacated for irregularity and purchase
money recovered by purchaser—Form 6-26
- § 6:297 Affidavit in support of motion to release part of
property levied upon—Form 6-27
- § 6:298 Order directing release of part of property levied
upon—Form 6-28

CHAPTER 7. ENFORCEMENT OF JUDGMENTS AGAINST PERSONAL PROPERTY

I. INTRODUCTION

A. GENERAL CONSIDERATIONS

- § 7:1 Generally

B. STATUTORY PROVISIONS

- § 7:2 Generally

C. ENTRY OF JUDGMENT

- § 7:3 Generally

TABLE OF CONTENTS

D. FEDERAL COURT JUDGMENTS

- § 7:4 Generally
- § 7:5 Using state enforcement officers to enforce federal judgment

E. LOWER COURT JUDGMENTS

- § 7:6 Generally
- § 7:7 District courts
- § 7:8 —Area of allowable levy
- § 7:9 —Enforcement officer
- § 7:10 New York City civil courts
- § 7:11 —Area of allowable levy
- § 7:12 —Enforcement officer
- § 7:13 All other city civil courts
- § 7:14 —Area of allowable levy
- § 7:15 —Enforcement officer
- § 7:16 Justice courts
- § 7:17 —Area of allowable levy
- § 7:18 —Enforcement officer
- § 7:19 —Town court
- § 7:20 —Village court
- § 7:21 —City court

F. SUPREME OR COUNTY COURT JUDGMENTS

- § 7:22 Generally
- § 7:23 Area of allowable levy
- § 7:24 Enforcement officer

G. DOCKETING OF ORIGINAL JUDGMENT

- § 7:25 Generally
- § 7:26 Transcript of judgment
- § 7:27 —Effect on lower court judgments
- § 7:28 —Procedure
- § 7:29 —Additional county
- § 7:30 —Transcript from federal court
- § 7:31 Form of docketing

II. METHODS OF ENFORCEMENT AGAINST PERSONAL PROPERTY OF JUDGMENT DEBTOR

A. LEVY ON PERSONAL PROPERTY

§ 7:32 Generally

B. PRACTICAL CONSIDERATIONS

§ 7:33 Generally
§ 7:34 Advantages
§ 7:35 —Most property interests subject to execution
§ 7:36 —Property sold or collected
§ 7:37 —May encourage settlement
§ 7:38 Disadvantages
§ 7:39 —Creditor must identify debtor's assets
§ 7:40 —Generous exemptions for individual debtors
§ 7:41 —Possibly disappointing net realization from execution sale
§ 7:42 —May encourage bankruptcy
§ 7:43 Federal FDCPA venue restrictions

C. PERSONAL PROPERTY EXECUTION

§ 7:44 Generally
§ 7:45 Applicability to money judgment and other orders
§ 7:46 —Sanctions awards
§ 7:47 —Domestic relations orders
§ 7:48 —Inapplicable to judgments against New York State
§ 7:49 Witness protection program does not protect judgment debtors
§ 7:50 Attorney General's action upon failure of judgment debtor to comply
§ 7:51 —Judgment creditor's rights upon refusal by attorney general to disclose judgment debtor's location
§ 7:52 Contents of execution
§ 7:53 —Date of judgment
§ 7:54 —Amount of judgment
§ 7:55 —Property restrictions
§ 7:56 —Transcript of judgment
§ 7:57 —Jurisdiction
§ 7:58 —Mortgage debt
§ 7:59 —Mortgage creditor to proceed by foreclosure
§ 7:60 Specific requirements when multiple debtors exist, or assets are in multiple locations

TABLE OF CONTENTS

- § 7:61 —Multiple debtors
- § 7:62 —Multiple counties
- § 7:63 Specific requirements when multiple debts exist, or assets are in multiple locations—Multiple counties—Risk of excessive levies
- § 7:64 Support judgments
- § 7:65 Money judgments over twenty years old

D. JUDGMENT CREDITOR'S RIGHTS UPON EXECUTION

- § 7:66 Generally
- § 7:67 Exceptions
- § 7:68 Practical considerations

E. NO LIEN EXISTS BY VIRTUE OF PRIVATE JUDGMENT

- § 7:69 Generally

F. GENERAL PROCEDURE FOR ISSUANCE OF EXECUTION

- § 7:70 Generally
- § 7:71 Issuance of execution and fee to levying officer
- § 7:72 —Who serves as levying officer
- § 7:73 —Local statutes to govern
- § 7:74 —No one else
- § 7:75 —Judgment creditor's instructions
- § 7:76 —Instructions to be included
- § 7:77 —Required fees

G. PROCEDURE FOR SHERIFF TO EXECUTE AND LEVY

1. Introduction

- § 7:78 Generally

2. Notice

- § 7:79 Generally
- § 7:80 Content of CPLR 5222 notice

3. Levy by Seizure

- § 7:81 Generally
- § 7:82 Liability of judgment creditor if execution not served
- § 7:83 Satisfaction of statutory notice requirement is burden of judgment creditor

ENFORCING JUDGMENTS

- § 7:84 Actual seizure required
- § 7:85 Property capable of delivery
- § 7:86 —Tangibles
- § 7:87 —Constructive tangibility
- § 7:88 ——Examples
- § 7:89 ——Garnishee relinquishing control creates constructive possession
- § 7:90 —Property not capable of delivery

4. Levy by Service of Execution

- § 7:91 Generally
- § 7:92 Procedure
- § 7:93 —Who may be served
- § 7:94 ——Definition
- § 7:95 ——Proper garnishee
- § 7:96 ——Where property consists of right or share of stock
- § 7:97 ——Right or interest in decedent's estate or any other property
- § 7:98 ——Interest in partnership
- § 7:99 ——Property evidenced by negotiable instrument
- § 7:100 ——Exception
- § 7:101 —New York State as garnishee
- § 7:102 —Claims by New York State to property
- § 7:103 —No judgment may be entered against state without special proceeding
- § 7:104 Validity
- § 7:105 Property subject to levy
- § 7:106 —Currently in possession of garnishee
- § 7:107 Generally—Property in possession may not be garnished if judgment debtor has no interest in property
- § 7:108 Property subject to levy—Coming into possession of garnishee
- § 7:109 Transfer of property to enforcement officer
- § 7:110 —Timing of transfer
- § 7:111 —Expiration of levy
- § 7:112 —Levy is void after ninety days

H. RETURN OF EXECUTION

- § 7:113 Generally
- § 7:114 No service made
- § 7:115 —Exception
- § 7:116 —Extension
- § 7:117 —Tolling

TABLE OF CONTENTS

- § 7:118 Return of execution when levy made by service of execution
- § 7:119 Return of execution when levy made by seizure of property
- § 7:120 Property collected
- § 7:121 —Copies to debtor
- § 7:122 Sheriff's records
- § 7:123 —Court may permit amendment
- § 7:124 Poundage due to levying officer
- § 7:125 —Liability for poundage when execution effectuated
- § 7:126 —Liability for poundage when settlement made
- § 7:127 —Defendant liable for poundage if defendant has interfered with collection efforts
- § 7:128 —Defendant liable for poundage upon default

I. ALTERNATIVES TO PERFECTING LEVY

- § 7:129 Generally
- § 7:130 Property of debtor in possession of third party
- § 7:131 Indebtedness owed to debtor
- § 7:132 —Remedy for dispute between judgment debtor and third party
- § 7:133 Special proceeding required
- § 7:134 —Notice must be given
- § 7:135 —Type of service required
- § 7:136 Liability for costs
- § 7:137 Liability of judgment creditor for damages
- § 7:138 —Satisfied judgment
- § 7:139 Liability of garnishee
- § 7:140 —Exception
- § 7:141 —Discharge of garnishee's obligation
- § 7:142 —Liability of enforcement officer
- § 7:143 — —Exception
- § 7:144 — —Must use due diligence

III. SALE OF PERSONAL PROPERTY AFTER EXECUTION AND LEVY

A. ENFORCEMENT OF JUDGMENT OR ORDER BY SALE OF PROPERTY

- § 7:145 Generally
- § 7:146 Type of sale
- § 7:147 —Time and place of sale
- § 7:148 —Manner of sale at public auction
- § 7:149 —No sale to specified persons

ENFORCING JUDGMENTS

- § 7:150 —Property must be present
- § 7:151 ——Exception
- § 7:152 ——Only part of property present
- § 7:153 —Payment for property sold at public auction
- § 7:154 ——Title

B. PUBLIC NOTICE OF SALE

- § 7:155 Generally
- § 7:156 Timeliness of notice by posting
- § 7:157 Timeliness of notice by advertising
- § 7:158 Contents of notice
- § 7:159 Effect of failure to properly publish notice

C. SALE WITHOUT NOTICE

- § 7:160 Generally
- § 7:161 Example

D. POSTPONEMENT OF SALE

- § 7:162 Generally

E. SHERIFF'S LIABILITY FOR IMPROPER NOTICE

- § 7:163 Generally

F. UNSALEABLE MATERIAL

- § 7:164 Generally
- § 7:165 Notice to owner
- § 7:166 Disposition of property deemed unsaleable

G. DISTRIBUTION OF PROCEEDS OF PERSONAL PROPERTY

- § 7:167 Generally
- § 7:168 Fees, expenses, and taxes to be paid first
- § 7:169 Judgment creditor paid from proceeds after fees and such
- § 7:170 Excess
- § 7:171 Time for distribution

H. PRIORITY AMONG EXECUTION CREDITORS

- § 7:172 Generally
- § 7:173 Same enforcement officer

TABLE OF CONTENTS

- § 7:174 Different enforcement officers
- § 7:175 —Distribution to remaining creditors
- § 7:176 Executions not to be satisfied
- § 7:177 Exception for child support executions
- § 7:178 —More than one past-due child support order
- § 7:179 Excess to judgment debtor

I. SECURED CREDITORS' RIGHTS NOT IMPAIRED

- § 7:180 Generally

J. PRIORITY AMONG OTHER JUDGMENT CREDITORS

- § 7:181 Generally
- § 7:182 Measurements of priority qualification
- § 7:183 Two or more orders affecting same property
- § 7:184 Divesting of priority of judgment creditor

IV. PERSONAL PROPERTY EXEMPT FROM ENFORCEMENT OF MONEY JUDGMENTS

A. INTRODUCTION

- § 7:185 Generally
- § 7:186 Exemptions strictly statutory
- § 7:187 Statutory exemptions expanded and clarified
- § 7:188 Construction of exemption laws
- § 7:189 —All qualified trust funds exempt
- § 7:190 —U.S. Supreme Court only court to review state court's determination of exemption under *Rooker-Feldman* doctrine
- § 7:191 Purpose of exemption laws
- § 7:192 Impact of federal bankruptcy code
- § 7:193 —Federal deference to state law
- § 7:194 —New York statutory scheme; “opt-out legislation”

B. PERSONS ENTITLED TO EXEMPTIONS

- § 7:195 Generally
- § 7:196 Claims are personal
- § 7:197 Persons in armed forces
- § 7:198 Laborers, mechanics, and farmers; Persons engaged in profession or business
- § 7:199 Nonresidents

C. PROCEDURES FOR CLAIMING EXEMPTIONS

- § 7:200 Generally

ENFORCING JUDGMENTS

- § 7:201 Exemptions waived if not timely claimed
- § 7:202 New exemption procedures in place
- § 7:203 Exemption notice and exemption claim form to be provided
- § 7:204 Content of exemption notice
- § 7:205 Exemption claim form
- § 7:206 Exemptions waived if not timely claimed—Absolutely exempt property excepted—Wrongful levy
- § 7:207 Proceeding to determine adverse claims
- § 7:208 —Procedure
- § 7:209 —Court ruling
- § 7:210 ——Questions of fact
- § 7:211 ——Voidable execution
- § 7:212 Directions to sheriff
- § 7:213 Remedies for violation of rights
- § 7:214 Consent to waive
- § 7:215 Who may claim exemptions
- § 7:216 Time and manner of claiming exemption
- § 7:217 Time and manner of claiming exemption on funds in a banking institution
- § 7:218 Time and manner of claiming exemption—Burden of proof

D. SPECIFIC EXEMPT PERSONAL PROPERTY

1. Introduction

- § 7:219 Generally
- 2. Exemptions Clearly Delineated By Statute
- § 7:220 Generally
- § 7:221 Stoves
- § 7:222 Sewing machines
- § 7:223 Bible, family pictures, and school books
- § 7:224 Church seat or pew
- § 7:225 Domestic animals and debtor's food
- § 7:226 Wearing apparel, household furniture, and furnishings
- § 7:227 Wedding ring and watch
- § 7:228 Necessary working tools and implements
- § 7:229 —Tools, implements, and equipment must be useful
- § 7:230 ——Automobile not considered “working tool”
- § 7:231 ——Shares in stock in corporation through which debtor did business are not considered “tools of the trade”
- § 7:232 —Professional instruments, furniture, and library

TABLE OF CONTENTS

3. Exemptions of Cause of Action and Damages
for Taking or Injuring Exempt Personal
Property

- § 7:233 Generally
- 4. Trust Exemption
- § 7:234 Generally
- § 7:235 Qualified trusts
- § 7:236 Not applicable to self-settled trusts
- § 7:237 —Control of trust as factor
- § 7:238 Totten trusts
- § 7:239 Spendthrift trusts
- § 7:240 Mandates for trust to be and remain exempt
- § 7:241 —Must be more than ninety days old
- § 7:242 —Must not be a voidable transaction
- § 7:243 —Non-applicability to qualified domestic relations
orders
- 5. Exceptions
- § 7:244 Generally
- § 7:245 Judgment for purchase price
- § 7:246 Judgment for work, labor, or services performed by
individual domestic worker, laborer, or mechanic
- 6. Income Exemptions
- § 7:247 Generally
- § 7:248 Ninety percent of trust income
- § 7:249 —Exception
- § 7:250 Ninety percent of regular income
- § 7:251 Maintenance or support payments
- § 7:252 —Separation agreement or divorce decree payments
equally exempt
- 7. Exemptions to Member of Armed Forces
- § 7:253 Generally
- § 7:254 Not applicable to support orders
- 8. Exemption for Unpaid Milk Proceeds
- § 7:255 Generally
- 9. Security Deposit Exemption
- § 7:256 Generally

ENFORCING JUDGMENTS

10. Medical Supplies and Necessary Services for Disabled Persons

§ 7:257 Generally

11. Exemption for Life Insurance Policies

§ 7:258 Generally

12. Exemption for New York State College Choice Tuition Savings Program Trust Fund Payment Monies

§ 7:259 Generally

E. MISCELLANEOUS STATUTORY EXEMPTIONS

§ 7:260 Generally

§ 7:261 Workers' compensation benefits

§ 7:262 Partnership property

§ 7:263 Insurance proceeds

F. FEDERAL EXEMPTIONS

§ 7:264 Generally

§ 7:265 Social Security payments

§ 7:266 Pensions and retirement benefits

§ 7:267 Pensions and retirement benefits' exemptions now
settled law

§ 7:268 Retirement plans exemptions clarified under The
Bankruptcy Abuse Prevention and Consumer
Protection Act of 2005

§ 7:269 Pensions and retirement benefits—Exception

§ 7:270 ——New York view

§ 7:271 —Principal transferred to IRA account remains
exempt

§ 7:272 —Funds transferred pursuant to voidable
transactions not exempt

§ 7:273 —Annuities, pension payments, and benefits

§ 7:274 —Seamen's wages

V. USE OF GARNISHMENTS AND RESTRAINING NOTICES IN ENFORCEMENT OF JUDGMENTS

A. ISSUANCE AND SERVICE

§ 7:275 Generally

§ 7:276 Issuance

§ 7:277 Upon whom served

TABLE OF CONTENTS

- § 7:278 —Exception
- § 7:279 —Banks
- § 7:280 ——Banks' right of setoff
- § 7:281 ——Reasonable period of time for restraint to become effective
- § 7:282 Manner of service
- § 7:283 Judgment debtor need not be within state
- § 7:284 —Exceptions
- § 7:285 ——State department or agency
- § 7:286 ——State board, commission, body, or agency not within department of state

B. CONTENTS OF RESTRAINING NOTICE

- § 7:287 Generally
- § 7:288 Parties, court, and judgment information
- § 7:289 Statutory provisions
- § 7:290 Contempt information
- § 7:291 Signature required

C. RESTRAINING NOTICE IN FORM OF MAGNETIC TAPE

- § 7:292 Generally
- § 7:293 Information required
- § 7:294 Signature not required

D. NOTICE TO JUDGMENT DEBTOR OR OBLIGOR

- § 7:295 Generally
- § 7:296 When notice required
- § 7:297 If notice has not been given
- § 7:298 Type of service required
- § 7:299 Contents of notice
- § 7:300 —Manner of service of 5225(e) notice
- § 7:301 —Consequences of failure to comply with CPLR 5222(d) and (e)

E. EFFECT OF RESTRAINT UPON JUDGMENT DEBTOR

- § 7:302 Generally
- § 7:303 Duration of restraint

F. EFFECT OF RESTRAINT UPON OTHER PARTIES

- § 7:304 Generally

ENFORCING JUDGMENTS

- § 7:305 Procedure
- § 7:306 Stays of any sale, assignment, or transfer
- § 7:307 All property subject to restraint
- § 7:308 —Ineffectiveness of restraint under certain conditions
- § 7:309 Duration of restraint
- § 7:310 —Effect of limitation on duration or restraint
- § 7:311 —Extension of restraint

G. EXCEPTIONS TO COMPLIANCE WITH RESTRAINT

- § 7:312 Generally
- § 7:313 Third parties with no relationship with judgment debtor at time of restraint
- § 7:314 —Third party need not comply when restraint ineffective
- § 7:315 Funds which do not belong to debtor
- § 7:316 Third party merely conduit of funds; not property of debtor
- § 7:317 Executor as judgment debtor in representative capacity
- § 7:318 Employer of judgment debtor
- § 7:319 Restraining notice is only valid as to debts included in judgment it covered

H. THIRD PARTIES' LIABILITY FOR FAILURE TO HEED RESTRAINT

- § 7:320 Generally

I. JUDGMENT CREDITOR AND SUPPORT COLLECTION UNIT'S LIABILITY

- § 7:321 Generally
- § 7:322 When liability attaches
- § 7:323 —Creditor's assumption of risk

J. ATTORNEYS MAY BE LIABLE

- § 7:324 Generally
- § 7:325 Good faith may absolve

K. AMOUNT TO BE WITHHELD

- § 7:326 Generally
- § 7:327 Intent of provision

TABLE OF CONTENTS

L. ISSUANCE OF SUBSEQUENT RESTRAINING NOTICES

- § 7:328 Generally
- § 7:329 Banking institution exception
- § 7:330 Not applicable to judgment debtor
- § 7:331 Assignment does not alter statute
- § 7:332 Need for additional restraint must be proven

VI. SUBPOENAS USED IN ENFORCEMENT OF JUDGMENTS

- § 7:333 Types of subpoenas available
- § 7:334 —Subpoena requiring attendance for taking deposition
- § 7:335 —Subpoena duces tecum
- § 7:336 —Information subpoena
- § 7:337 Information subpoena as enforcement tool
- § 7:338 —What must accompany information subpoena
- § 7:339 —Manner of service
- § 7:340 —Who is required to answer
- § 7:341 ——Forms of answers required
- § 7:342 ——Time to answer
- § 7:343 ——Oath required
- § 7:344 —Fees
- § 7:345 —Service of information subpoena outside of New York

VII. RECEIVERS AS TOOLS OF ENFORCEMENT

A. APPOINTMENT AND SCOPE

- § 7:346 Generally

B. NOTICE

- § 7:347 Generally

C. CONTENTS

- § 7:348 Generally

D. RIGHTS AND POWERS OF RECEIVER

- § 7:349 Generally
- § 7:350 Power to employ counsel
- § 7:351 Right to compensation
- § 7:352 Payment to receiver rather than sheriff

ENFORCING JUDGMENTS

- § 7:353 Receiver's powers subject to other statutory requirements
- § 7:354 —Oath
- § 7:355 —Undertaking
- § 7:356 —Written accounts
- § 7:357 —Removal
- § 7:358 Extension of receivership

VIII. INCOME EXECUTION AS ENFORCEMENT TOOL

A. INCOME EXECUTION

- § 7:359 Generally

B. DEFINITIONS

- § 7:360 Generally
- § 7:361 Earnings
- § 7:362 Disposable earnings

C. INCOME

- § 7:363 Generally
- § 7:364 Subject to statutory exemptions

D. RESTRICTIONS

- § 7:365 Generally
- § 7:366 Minimum wage standards
- § 7:367 No more than twenty-five percent of disposable earnings
- § 7:368 —Special requirement when deductions are already being made from debtor's income for support
- § 7:369 No amount permitted for judgments arising from certain medical debts

E. PRACTICAL CONSIDERATIONS

- § 7:370 Generally
- § 7:371 Advantages
- § 7:372 —Employer information essential
- § 7:373 —May induce settlement
- § 7:374 —Too little involved to induce bankruptcy
- § 7:375 Disadvantages
- § 7:376 —Limit on reachable earnings
- § 7:377 —Small amount to be recovered over lengthy time period

TABLE OF CONTENTS

- § 7:378 —Lost if employment ceases
- § 7:379 —Might induce bankruptcy

F. VENUE RESTRICTIONS; CONSUMER DEBTS

- § 7:380 Generally
- § 7:381 Violations subject creditor and attorney to liability

G. ISSUANCE

- § 7:382 Generally
- § 7:383 Who may issue
- § 7:384 Wage limitations
- § 7:385 Percentage limitation

H. CONTENTS AND FORM OF INCOME EXECUTION

- § 7:386 Generally
- § 7:387 Information specific to income executions
- § 7:388 —Name and address
- § 7:389 —Dollar amount
- § 7:390 —Frequency
- § 7:391 —Installment information
- § 7:392 —Notice to judgment debtor
- § 7:393 Alert to debtor
- § 7:394 —Extent of withholding permitted
- § 7:395 —Limitations on amount that can be withheld
- § 7:396 —Explanation of limitations
- § 7:397 —Ability to challenge

I. SERVICE OF INCOME EXECUTION

- § 7:398 Alert to debtor—Ability of debtor to challenge income
- § 7:399 Delivery to sheriff
- § 7:400 Service upon judgment debtor
- § 7:401 —Time limits
- § 7:402 —Manner of service

J. ACTIVITY BY SHERIFF ONCE DEBTOR SERVED

- § 7:403 Generally
- § 7:404 Activity by sheriff if unable to serve debtor or debtor defaults
- § 7:405 —Service upon employer in same county as debtor
- § 7:406 —Service upon employer in different county from debtor

ENFORCING JUDGMENTS

- § 7:407 —Manner of service
- § 7:408 ——Indorsement required
- § 7:409 —Effect of service upon employer

K. OBLIGATIONS OF EMPLOYER

- § 7:410 Generally
- § 7:411 Liability of employer
- § 7:412 Effect of employment termination
- § 7:413 —Exception
- § 7:414 Employer may not discriminate
- § 7:415 —Action against employee in event of discrimination
- § 7:416 ——Monetary damages recoverable
- § 7:417 ——Other damages recoverable
- § 7:418 ——Other court punishment

L. OBLIGATIONS OF SHERIFF

- § 7:419 Generally
- § 7:420 Computation of interest
- § 7:421 Keep employer informed
- § 7:422 Levy to continue until full judgment paid
- § 7:423 —Consequence of failure to keep employer informed
- § 7:424 Accounting by sheriff

M. LEVY UPON INCOME PAYABLE BY MUNICIPAL CORPORATIONS

- § 7:425 Generally
- § 7:426 Generally
- § 7:427 Title or position of judgment debtor to be stated
- § 7:428 Fee

N. LEVY UPON INCOME PAYABLE BY STATE

- § 7:429 Generally
- § 7:430 Appropriate party to be served
- § 7:431 Type of service

O. PRIORITIES AMONG INCOME EXECUTIONS

- § 7:432 Generally
- § 7:433 Priority among several income executions
- § 7:434 —Only one levy at a time
- § 7:435 Priority when employer must be served
- § 7:436 —Employer in another county

TABLE OF CONTENTS

§ 7:437 Priority between judgment creditors and support creditors

P. MODIFICATION OF INCOME EXECUTION

§ 7:438 Generally

§ 7:439 Where modification may be sought

IX. INCOME EXECUTION FOR SUPPORT ENFORCEMENT

A. INTRODUCTION

§ 7:440 Generally

B. ADVANTAGES

§ 7:441 Generally

§ 7:442 Not limited to 10% of earnings

§ 7:443 Use of sheriff not necessary

C. DEFINITIONS

§ 7:444 Generally

§ 7:445 Order of support

§ 7:446 Debtor

§ 7:447 Creditor

§ 7:448 Employer

§ 7:449 Income payor

§ 7:450 Income

§ 7:451 —Exception

§ 7:452 Default

§ 7:453 Mistake of fact

§ 7:454 Support collection unit

§ 7:455 Date of withholding

§ 7:456 Health insurance benefits

D. FORM OF EXECUTION FOR SUPPORT ENFORCEMENT

§ 7:457 Generally

§ 7:458 Caption and court

§ 7:459 Date

§ 7:460 Periodic payments

§ 7:461 Arrears and default

§ 7:462 Debtor and creditor identified

§ 7:463 Employment information

- § 7:464 Deduction amount
- § 7:465 Income to be utilized
- § 7:466 Mistake of fact information
- § 7:467 —Fifteen day limit
- § 7:468 —Manner in which to assert mistake of fact
- § 7:469 —Determination deadline
- § 7:470 —Written notice will be given
- § 7:471 Date on which deductions must begin
- § 7:472 Binding until further notice
- § 7:473 No discrimination
- § 7:474 Limitations to deductions
- § 7:475 Notification by employer in event of debtor's termination

E. SPECIAL REQUIREMENT FOR MEDICAL SUPPORT

- § 7:476 Generally
- § 7:477 Health insurance mandate
- § 7:478 Inquiry to employer regarding health insurance benefits
- § 7:479 Direction to employer to purchase available health insurance benefits
- § 7:480 Direction to employer to deduct premium amount from employer's salary
- § 7:481 Issuer to be notified of any changes
- § 7:482 No extraordinary measures necessary
- § 7:483 Employer or organization liability for failure

F. NOTICE TO DEBTOR

- § 7:484 Generally

G. ISSUANCE OF EXECUTION

- § 7:485 Generally
- § 7:486 Service upon debtor
- § 7:487 Debtor's opportunity to assert mistake of fact
- § 7:488 —When execution issued by support collection unit
- § 7:489 ——Determination
- § 7:490 ——Mistake of fact assertion rejected
- § 7:491 —If execution issued by attorney, sheriff, or clerk of court
 - § 7:492 ——Application to family court
 - § 7:493 ——Determination
 - § 7:494 ——Application to Supreme Court

TABLE OF CONTENTS

- § 7:495 — — —Determination
- § 7:496 Service upon employer
- § 7:497 —Service upon agent
- § 7:498 —Levy upon money payable by state compared
- § 7:499 — —Levy upon money payable directly by
Department of State
- § 7:500 — —Levy upon money payable by agency not within
Department of State

H. DEDUCTION FROM INCOME

- § 7:501 Generally
- § 7:502 Time limits
- § 7:503 Requirements
- § 7:504 Amount deducted
- § 7:505 —Where debtor is currently supporting spouse or
child other than creditor
- § 7:506 — —Exception for reduction of arrears
- § 7:507 —Where debtor is not currently supporting spouse or
child other than creditor
- § 7:508 — —Exception for reduction of arrears

I. LIABILITY OF EMPLOYER

- § 7:509 Generally
- § 7:510 Creditor may commence suit
- § 7:511 Potential fine

J. EFFECT OF TERMINATION OF EMPLOYEE

- § 7:512 Generally
- § 7:513 Notice to issuer

K. ISSUANCE OF EXECUTION FOR MEDICAL SUPPORT

- § 7:514 Generally
- § 7:515 Obligations of employer
- § 7:516 Creditor only entitled to what is available
- § 7:517 —Additional obligations to employer
- § 7:518 — —Immediate enrollment of parent
- § 7:519 — —Immediate enrollment of dependent
- § 7:520 — —Confirmation to be provided
- § 7:521 — —Enrollment not to be terminated
- § 7:522 — — —Exception
- § 7:523 Liability of employer

L. PRIORITY

- § 7:524 Generally
- § 7:525 Priority between support enforcement executions
- § 7:526 —Allocation to arrears

M. MODIFICATION

- § 7:527 Generally

X. INCOME DEDUCTION ORDER FOR SUPPORT ENFORCEMENT

A. INTRODUCTION

- § 7:528 Generally

B. DEFINITIONS

- § 7:529 Generally

C. PRIOR USE OF INCOME EXECUTION NOT ESSENTIAL

- § 7:530 Generally

D. PROCEDURE

- § 7:531 Generally

E. GOOD CAUSE TO BE SHOWN

- § 7:532 Generally
- § 7:533 Factors in determining good cause
- § 7:534 Prima facie case

F. ENTRY OF INCOME DEDUCTION ORDER FOR SUPPORT ENFORCEMENT

- § 7:535 Generally
- § 7:536 Income deduction order not to be entered
- § 7:537 —Good cause exists to not enter income deduction order
- § 7:538 ——Good cause defined
- § 7:539 ——Alternative arrangements
- § 7:540 ——Alternative arrangement to be recorded
- § 7:541 Contents of order
- § 7:542 Transmittal of order

TABLE OF CONTENTS

G. RESPONSIBILITIES OF EMPLOYER AFTER SERVICE OF INCOME DEDUCTION ORDER

- § 7:543 Generally
- § 7:544 Time limits
- § 7:545 Requirements
- § 7:546 Amount to be deducted
- § 7:547 —Where debtor is currently supporting spouse or child other than creditor's dependent child
- § 7:548 —Exception for reduction of arrears
- § 7:549 —Where debtor is not currently supporting spouse or dependent child other than creditor's dependent child
- § 7:550 —Exception for reduction of arrears

H. LIABILITY OF EMPLOYER

- § 7:551 Generally
- § 7:552 Debtor remains liable
- § 7:553 Creditor may commence suit

I. EFFECT OF TERMINATION OF EMPLOYEE

- § 7:554 Generally
- § 7:555 Notice to issuer

J. PRIORITY

- § 7:556 Generally
- § 7:557 Priority between income deduction orders for support enforcement

XI. SUPPORT ORDERS; UNIFORM INTERSTATE FAMILY SUPPORT ACT

- § 7:558 Statutory basis
- § 7:559 Jurisdiction
- § 7:560 —Methods for obtaining personal jurisdiction
- § 7:561 —Jurisdiction will not be granted unless initiating court had personal jurisdiction in first place
- § 7:562 Procedure; long-arm proceedings
- § 7:563 —Reciprocal proceedings
- § 7:564 Enforcement; national income-withholding order
- § 7:565 —Registration
- § 7:566 Rights of respondent
- § 7:567 Modification

XII. FORMS

- § 7:568 Notice to judgment debtor or obligor—Form 7-1

- § 7:569 Exemption Notice (As required by New York Law)—
Form 7-2
- § 7:570 Exemption Claim Form—Form 7-3
- § 7:571 Affidavit in support of motion for extension of time in
which to transfer personal property not capable of
delivery or pay debts to sheriff pursuant to levy—
Form 7-4
- § 7:572 Petition in special proceeding for payment to
judgment creditor or delivery of property not in
possession of judgment debtor (turnover
proceeding)—Form 7-5
- § 7:573 Affidavit in support of motion for payment or delivery
of personal property in possession of judgment
debtor (turnover)—Form 7-6
- § 7:574 Petition in special proceeding for payment of debt
owed to judgment debtor—Form 7-7
- § 7:575 Affirmation in support of petition in special
proceeding for payment of debt owed to judgment
debtor—Form 7-8
- § 7:576 Notice of sale of personal property under execution
notice of sheriff's sale—Form 7-9
- § 7:577 Affirmation in support of petition in special
proceedings to determine adverse claim—Form 7-10
- § 7:578 Affidavit in support of motion for income deduction
order for support enforcement on ground of default
in payment—Form 7-11
- § 7:579 Petition for income deduction order, based on official
form—Form 7-12

CHAPTER 8. PROCEDURES SUPPLEMENTARY TO OBTAINING A JUDGMENT

I. INTRODUCTION

- § 8:1 Generally

II. IN-PERSON EXAMINATION OF JUDGMENT DEBTOR AND THIRD PARTIES

A. PRACTICAL CONSIDERATIONS

- § 8:2 Generally

B. ADVANTAGES

- § 8:3 Generally

TABLE OF CONTENTS

- § 8:4 Information gathering
- § 8:5 Turnover orders obtainable
- § 8:6 —Special proceedings required for property in hands of third parties
- § 8:7 Effective discovery of assets
- § 8:8 Encourages settlement

C. DISADVANTAGES

- § 8:9 Generally
- § 8:10 Expense
- § 8:11 Debtor “tipped off”

D. STATUTORY AUTHORITY

- § 8:12 Generally
- § 8:13 Examination by judgment creditor
- § 8:14 —Compel disclosure of all relevant matter
- § 8:15 —Attorney authorized to issue various types of subpoenas
- § 8:16 —Statutory fees
- § 8:17 ——No fee to judgment debtor

E. EXAMINATION BY ORAL TESTIMONY

- § 8:18 Generally
- § 8:19 Necessity for oath
- § 8:20 Record of testimony
- § 8:21 All appearances to be noted
- § 8:22 Manner in which examination shall proceed
- § 8:23 Objections
- § 8:24 Continuous examination
- § 8:25 Translator to be provided by judgment creditor
- § 8:26 Production of books and records at oral examination
- § 8:27 Judgment debtor has no right to be present at third-party examination
- § 8:28 Production of books and records for subpoena duces tecum—Judgment debtor
- § 8:29 —Party or witness other than judgment debtor
- § 8:30 Signing of deposition
- § 8:31 —Witness given opportunity to effect changes in form or substance
- § 8:32 —Statutory requirement
- § 8:33 —Failure of witness to sign

F. EVIDENTIARY PRIVILEGES APPLICABLE

- § 8:34 Generally

ENFORCING JUDGMENTS

- § 8:35 Immunity from criminal prosecution
- § 8:36 —Notice must be given to district attorney
- § 8:37 Immunity from contempt proceedings

G. SUBSEQUENT EXAMINATION WITHIN ONE YEAR OF CONCLUSION OF PREVIOUS EXAMINATION

- § 8:38 Generally

H. INTRANSIGENT JUDGMENT DEBTOR OR WITNESS

- § 8:39 Generally

I. USE OF SUBPOENAS TO COMPEL APPEARANCE BY NON-PARTY

- § 8:40 Generally
- § 8:41 Service of subpoena
- § 8:42 —Certain child support subpoenas differentiated
- § 8:43 Filing of proof of service not required under certain conditions
- § 8:44 —Service upon person of suitable age or discretion
- § 8:45 —“Nail and mail” service

J. PROCEDURE TO OBTAIN IN-PERSON EXAMINATION

- § 8:46 Generally
- § 8:47 Timely notice
- § 8:48 Proper time when examination may be taken
- § 8:49 Proper place for examination
- § 8:50 —Parties
- § 8:51 —Non-party resident
- § 8:52 —Non-party non-resident
- § 8:53 —Public corporations
- § 8:54 —Federal FDCPA venue restrictions; Consumer debts
- § 8:55 —Exceptions
- § 8:56 ——Consent
- § 8:57 —Waiver by non-objection

III. WRITTEN INTERROGATORIES TO JUDGMENT DEBTOR OR THIRD-PARTY WITNESS

- § 8:58 Procedure

TABLE OF CONTENTS

- § 8:59 Manner of service
- § 8:60 Replies to be furnished
- § 8:61 —Answers to be signed
- § 8:62 —Attestation required
- § 8:63 Witness fees
- § 8:64 —Fee necessary if attendance or production of books and records is required
- § 8:65 —No fee if personal attendance is not required
- § 8:66 Subsequent examination

IV. SUBPOENAS AVAILABLE FOR VARIOUS USES

- § 8:67 Attendance required
- § 8:68 Written questions
- § 8:69 Subpoena duces tecum
- § 8:70 —Only one day's notice required for municipal corporations and state
- § 8:71 Child support subpoena
- § 8:72 Information subpoena
- § 8:73 —Time for response
- § 8:74 —Form for response
- § 8:75 —Attestation required

V. ENFORCEMENT PROCEEDINGS TO COMPEL DISCLOSURE

A. REMEDY AVAILABLE WHEN VOLUNTARY COMPLIANCE REFUSED

- § 8:76 Generally

B. ORDER COMPELLING DISCLOSURE

- § 8:77 Generally
- § 8:78 Procedure
- § 8:79 —Proof of proper service of subpoena required
- § 8:80 Court's authority to punish for contempt

C. ARREST OF SUBPOENAED WITNESS

- § 8:81 Generally
- § 8:82 Arrest resulting in physical appearance
- § 8:83 Arrest resulting in incarceration
- § 8:84 —Particularity in arrest warrant required

D. ORDER DIRECTING PAYMENT OF MONEY

- § 8:85 Generally

- § 8:86 Property in possession of judgment debtor
- § 8:87 —Procedure
- § 8:88 —Manner of service of motion
- § 8:89 —Burden of proof
- § 8:90 Property not in possession of judgment debtor
- § 8:91 —Procedure
- § 8:92 —Manner of service of special proceeding
- § 8:93 —Burden of proof

E. TURNOVER PROCEEDING

1. Introduction

- § 8:94 Generally
- 2. Special Conditions for Safe Deposit Box
- § 8:95 Generally
- § 8:96 Voidable Transactions
- 3. Procedure
- § 8:97 Generally
- § 8:98 Manner of service of special proceeding
- § 8:99 —Necessary parties must be named and served
- § 8:100 Burden of proof
- 4. Sheriff's Levy
- § 8:101 Generally
- 5. Special Considerations
- § 8:102 Generally
- § 8:103 Difficulties presented when judgment debtor holds funds as joint tenants with non-party
- § 8:104 —Nature of interest
- § 8:105 —Burden of proof
- § 8:106 Judgment debtor's intervention in special proceeding
- § 8:107 —Intervention by adverse claimant
- § 8:108 Determination as to adverse claims to property
- § 8:109 —Service directed by court
- § 8:110 —Papers to be served
- § 8:111 —Intervention

F. ATTACHMENT

1. Introduction

- § 8:112 Generally

TABLE OF CONTENTS

	2. Lien Created By Delivery of Order of Attachment to Sheriff
§ 8:113	Generally
§ 8:114	Priorities of lien
	3. Proceedings to Determine Adverse Claims
§ 8:115	Generally
§ 8:116	Procedure
§ 8:117	Court in which petition can be heard
§ 8:118	Possible results
§ 8:119	Fraudulent adverse claim
	4. Levy upon Personal Property By Service of Order of Attachment
§ 8:120	Generally
§ 8:121	Method of levy
§ 8:122	Manner of service
§ 8:123	Requirements of notice to be served with order
§ 8:124	—Contents of notice
§ 8:125	Effect of levy
§ 8:126	—Third party to transfer or deliver to sheriff
§ 8:127	Duration of effect of attachment
	5. Sheriff's Seizure
§ 8:128	Generally
§ 8:129	Sheriff takes into actual custody all property or debts
§ 8:130	—Alternative seizure
§ 8:131	Sheriff's duty to collect and receive sufficient debts in amount specified in order of attachment
§ 8:132	Sheriff's notice of satisfaction
	6. Levy Upon Real Property As a Result of Attachment
§ 8:133	Generally
§ 8:134	Procedure
§ 8:135	—Filing notice of attachment
§ 8:136	—Recorded in same manner as notice of pendency
	7. Sheriff's Duties After Levy
§ 8:137	Generally
§ 8:138	Retention of property
§ 8:139	Court directed sale
§ 8:140	Filing of inventory of property
	8. Garnishee's Statement
§ 8:141	Generally

- § 8:142 Due within ten days
- § 8:143 Content

9. Disclosure

- § 8:144 Generally
- § 8:145 Procedure
- § 8:146 Timeliness of motion
- § 8:147 To whom available

10. Discharge of Attachment

- § 8:148 Generally
- § 8:149 Procedure
- § 8:150 Defendant may move
- § 8:151 Necessity for undertaking
- § 8:152 Motion does not constitute appearance

11. Vacating or Modifying Attachment

- § 8:153 Generally
- § 8:154 Procedure
- § 8:155 Who may move
- § 8:156 Plaintiff's opportunity to correct defect
- § 8:157 No appearance by movant
- § 8:158 Burden of proof

12. Annulment of Attachment

- § 8:159 Generally

13. Return of Property

- § 8:160 Generally
- § 8:161 Procedure
- § 8:162 —Outcomes
- § 8:163 Who may move
- § 8:164 —Disposition of attached property after execution issued
- § 8:165 —Priority of orders of attachment
- § 8:166 —Priority among orders of attachment, support orders and executions

G. FORCED ASSIGNMENT/INTERVENTION

- § 8:167 Generally
- § 8:168 Procedure
- § 8:169 Who may commence special proceeding
- § 8:170 Burden of proof

TABLE OF CONTENTS

**H. DISOBEDIENCE OF SUBPOENA, RESTRAINT,
OR ORDER; FALSE SWEARING; DESTROYING
NOTICE OF SALE**

- § 8:171 Generally
- § 8:172 Contempt of court
- § 8:173 —Warning to be contained in order to show cause
- § 8:174 —Power of court to order
- § 8:175 —Knowledge of disobedience essential
- § 8:176 Arrest of judgment debtor or witness
- § 8:177 *Ex parte* application
- § 8:178 Who may bring
- § 8:179 Issuance of warrant
- § 8:180 —Content of warrant
- § 8:181 —Sheriff's service of warrant and papers upon which it is based
- § 8:182 —Judgment debtor brought before issuing judge by sheriff and ordered to submit

VI. RESTRAINING NOTICES

A. ISSUANCE

- § 8:183 Generally

B. WHO MAY BE SERVED

- § 8:184 Generally
- § 8:185 When may restraining notice be served

C. MANNER OF SERVICE

- § 8:186 Generally
- § 8:187 Service upon department or agency of state
- § 8:188 Service upon state board, commission, or non-state department
- § 8:189 —Types of mail service required

D. CONTENTS

- § 8:190 Generally

**E. COMBINE RESTRAINING NOTICE WITH
INFORMATION SUBPOENA**

- § 8:191 Generally
- § 8:192 Banks as garnishee
- § 8:193 Other garnishees

F. REQUIRED NOTICE TO DEBTOR

- § 8:194 Generally
- § 8:195 Notification requirement
- § 8:196 Notice must contain information as to available legal services
- § 8:197 Notice must contain a reference to court availability
- § 8:198 Notice required within one year
- § 8:199 —Notice to be mailed to residence
- § 8:200 —Residence unknown or mail returned as undeliverable

G. EFFECT OF RESTRAINT; PROHIBITION OF TRANSFER; DURATION

- § 8:201 Generally
- § 8:202 Upon judgment debtor
- § 8:203 Upon non-judgment debtor
- § 8:204 Monetary exemptions expanded

H. SUBSEQUENT RESTRAINING NOTICE

- § 8:205 Generally

I. NO LIEN CREATED BY SERVICE OF RESTRAINING NOTICE

- § 8:206 Generally
- § 8:207 Amount of restraint
- § 8:208 Duration of restraint

J. DETERMINING ADVERSE CLAIMS

- § 8:209 Generally

K. PRIORITIES AND LIENS

- § 8:210 Generally
- § 8:211 Lien upon personal property
- § 8:212 —Exception
- § 8:213 Lien upon real property
- § 8:214 —Exceptions

L. LIABILITY FOR DAMAGES

- § 8:215 Generally

TABLE OF CONTENTS

VII. PROPERTY EXECUTIONS

A. CONTENTS

- § 8:216 Generally
- § 8:217 Transcript of judgment information required
- § 8:218 Order of attachment information required
- § 8:219 Mortgage debt information required

B. PROPERTY SUBJECT TO EXECUTION

- § 8:220 Generally

C. ISSUANCE

- § 8:221 Generally
- § 8:222 Enforcement involving state
- § 8:223 —New York State as garnishee
- § 8:224 Procedure when New York State refuses to respond to execution

D. JUDGMENT CREDITOR'S SUPERIOR RIGHTS OVER TRANSFeree

- § 8:225 Generally
- § 8:226 Exceptions

E. DISTRIBUTION OF PROCEEDS OF PERSONAL PROPERTY

- § 8:227 Generally
- § 8:228 Same enforcement officer
- § 8:229 —Exceptions
- § 8:230 Different enforcement officers
- § 8:231 —Exception

VIII. INCOME EXECUTIONS

A. CONTENTS

- § 8:232 Generally
- § 8:233 Notice to judgment debtor

B. ISSUANCE

- § 8:234 Generally
- § 8:235 Limits to amounts to be withheld
- § 8:236 —Relation to federal minimum hourly wage
- § 8:237 —No amounts in excess of 25% of disposable earnings

ENFORCING JUDGMENTS

§ 8:238 ——Modification of amounts over twenty-five percent
§ 8:239 ——Modification of any amount to be paid

C. DEFINITION OF EARNING AND DISPOSABLE INCOME

§ 8:240 Generally

D. SERVICE UPON DEBTOR

§ 8:241 Generally

E. LEVY UPON DEFAULT OR INABILITY TO SERVE DEBTOR

§ 8:242 Generally

§ 8:243 Exception

F. WITHHOLDING INSTALLMENTS

§ 8:244 Generally

§ 8:245 Commencing proceeding to recover

§ 8:246 Procedure

§ 8:247 —Who may commence

§ 8:248 —Modification

G. PRIORITY

§ 8:249 Generally

§ 8:250 Sheriff unable to locate debtor

§ 8:251 Priority of execution determined by date of first delivery under specific circumstances

H. ACCOUNTING BY SHERIFF

§ 8:252 Generally

IX. LEVY

A. LEVY UPON PERSONAL PROPERTY BY SERVICE OF EXECUTION

§ 8:253 Generally

§ 8:254 Service when New York State is garnishee

§ 8:255 Effectiveness of service of execution

§ 8:256 Requirement of notice to judgment debtor

§ 8:257 Types of property subject to levy

§ 8:258 —Exempt personal property

TABLE OF CONTENTS

- § 8:259 Exemption for money contained in banking institution expanded
- § 8:260 New exemption procedures in place
- § 8:261 Exemption notice and exemption claim form to be provided
- § 8:262 Content of exemption notice
- § 8:263 Exemption claim form
- § 8:264 Types of property subject to levy—Exempt real property
 - Exempt burying grounds
 - § 8:266 —Exempt trusts
 - § 8:267 —Exempt income
 - § 8:268 Ninety day effective period
 - § 8:269 —Levy void upon expiration of effective period
 - § 8:270 ——Exceptions for property or debts already transferred
 - § 8:271 ——Exception when special proceeding commenced
 - § 8:272 Effect of execution and levy

B. LEVY UPON REAL PROPERTY

- § 8:273 Generally
- § 8:274 Ten years must elapse
- § 8:275 —Exception
- § 8:276 Procedure

C. LEVY UPON MONEY PAYABLE BY MUNICIPAL CORPORATION OR STATE

- § 8:277 Generally
- § 8:278 Manner of service

D. DISCHARGE OF GARNISHEE'S OBLIGATION

- § 8:279 Generally

E. RELEASE OF LIEN OR LEVY UPON APPEAL

- § 8:280 Generally
- § 8:281 Procedure
- § 8:282 Who may bring motion
- § 8:283 Notice to judgment creditor
- § 8:284 Undertaking

F. SHERIFF'S RELEASE

- § 8:285 Generally

- § 8:286 Procedure
- § 8:287 Who may bring motion
- § 8:288 Notice to judgment creditors and others

X. SUPPORT ENFORCEMENT

A. DEFINITIONS

- § 8:289 Generally
- § 8:290 “Order of support”
- § 8:291 “Default”
- § 8:292 “Support collection unit”

B. ISSUANCE OF EXECUTION

- § 8:293 Generally
- § 8:294 Default
- § 8:295 Health insurance benefits mandated

C. PROCEDURE FOR EXECUTION FOR SUPPORT ENFORCEMENT

- § 8:296 Generally
- § 8:297 Content
- § 8:298 —Information required
- § 8:299 ——Income received or to be received
- § 8:300 ——Delineation of deductions
- § 8:301 —Notice required
- § 8:302 ——Application of deductions
- § 8:303 ——Notice regarding mistake of fact
- § 8:304 ——Commencement of deductions
- § 8:305 ——Duration of execution
- § 8:306 ——Discrimination due to income execution not permitted
 - —Limits to deductions
- § 8:308 ——Notification to be given to issuer of execution in event of termination of employment of debtor
- § 8:309 Notice to debtor
- § 8:310 Assertion of mistake of fact when execution has been issued by support collection unit
- § 8:311 —Determination of mistake of fact
- § 8:312 Assertion of mistake of fact when execution issued by attorney as officer of court, or by sheriff, or by clerk of court
 - Petition and notice required in supreme court
 - Determination of mistake of fact issue
- § 8:315 Disallowance of mistake of fact issue

TABLE OF CONTENTS

D. LEVY

§ 8:316 Generally

E. EXECUTION FOR INCOME DEDUCTION

§ 8:317 Generally

§ 8:318 Amounts to be deducted

§ 8:319 Amendment of execution

§ 8:320 —Employer's responsibility to commence deductions

§ 8:321 —Employer subject to "civil penalty"

§ 8:322 —Employer obligated to purchase health insurance benefits

F. COURT ORDERS AFFECTING INCOME EXECUTIONS FOR SUPPORT ENFORCEMENT

§ 8:323 Generally

§ 8:324 Procedure

§ 8:325 Grounds

§ 8:326 Defect, irregularity, and error or omission

G. INCOME DEDUCTION ORDER FOR SUPPORT ENFORCEMENT

§ 8:327 Generally

§ 8:328 Evidence to be considered

§ 8:329 —Debtor's financial state

§ 8:330 —Proof of default

§ 8:331 Employer obligation to commence deductions upon being notified

§ 8:332 Employer obligations to purchase health insurance benefits

§ 8:333 —Employer's liability for failure to purchase medical benefits

§ 8:334 —Liability for failure to comply with income deduction order

§ 8:335 Limits to amounts to be withheld

§ 8:336 —Judgment debtor is supporting another spouse or dependent child

§ 8:337 —No other spouse or dependent child is being supported by judgment debtor

XI. SALE OF JUDGMENT DEBTOR'S PROPERTY

A. ENFORCEMENT OF JUDGMENT OR ORDER BY SALE OF REAL PROPERTY

§ 8:338 Generally

ENFORCING JUDGMENTS

- § 8:339 Time within which sale may be take place
- § 8:340 Manner of sale
- § 8:341 Place for public auction sale
- § 8:342 Method of sale

B. SALE OF PERSONAL PROPERTY

- § 8:343 Generally

C. APPOINTMENT OF RECEIVER

- § 8:344 Generally

XII. ENFORCEMENT AGAINST ESTATES

A. LEAVE OF SURROGATE'S COURT REQUIRED

- § 8:345 Generally
- § 8:346 Procedure when letters testamentary have not issued

B. EXPIRATION OF LIEN TWO YEARS AFTER DEATH OF JUDGMENT DEBTOR

- § 8:347 Generally

XIII. FORMS

- § 8:348 Subpoena to take deposition of judgment witness—Form 8-1
- § 8:349 Information subpoena with restraining order—Form 8-2
- § 8:350 Order to show cause for contempt of court—Form 8-3
- § 8:351 Order for contempt and for arrest of witness—Form 8-4
- § 8:352 Petition for turnover—Form 8-5
- § 8:353 Notice of petition for turnover—Form 8-6
- § 8:354 Property execution with notice to garnishee—Form 8-7
- § 8:355 Income execution—Form 8-8
- § 8:356 Income execution for support enforcement—Form 8-9
- § 8:357 SUBPOENA (pursuant to the Uniform Interstate Deposition and Discovery Act and CPLR § 3119)—Form 8:10

CHAPTER 9. ENFORCEMENT OF SISTER STATE AND FOREIGN JUDGMENTS

I. INTRODUCTION

- § 9:1 Generally

TABLE OF CONTENTS

- § 9:2 Constitutional authority for full faith and credit
- § 9:3 —Exception

II. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

A. FILING OF SISTER STATE JUDGMENTS

- § 9:4 Generally

B. SCOPE OF ACT

- § 9:5 Generally
- § 9:6 Applicable to most judgments
- § 9:7 Restrictions for certain types of judgments
- § 9:8 —Default judgment
- § 9:9 —Judgment by confession
- § 9:10 —Consumer debts
- § 9:11 Attempts to broaden scope thwarted
- § 9:12 —No utilization to registration procedure for domestic judgment
- § 9:13 —Principles of comity will be observed in determining when foreign judgment eligible

C. REGISTRATION PROCEDURES

- § 9:14 Generally
- § 9:15 Documents required for filing
- § 9:16 —Authenticated copy of sister state judgment
- § 9:17 —Affidavit as to facts surrounding entry of sister state judgment
- § 9:18 —Necessary information
- § 9:19 Timing for filing
- § 9:20 Where to file
- § 9:21 Filing fee required
- § 9:22 Entry of judgment

D. NOTIFICATION OF JUDGMENT DEBTOR

- § 9:23 Generally
- § 9:24 Address for notification
- § 9:25 Proof of service required

E. STATUS OF REGISTERED JUDGMENT

- § 9:26 Generally
- § 9:27 Substantive merits of case not reviewable by New York courts

ENFORCING JUDGMENTS

- § 9:28 No greater effect will be given by New York courts than by court of original judgment
- § 9:29 Interest rate set by original forum, not New York
- § 9:30 New York applies its own interest rate nevertheless

F. THIRTY-DAY HOLD ON ENFORCEMENT

- § 9:31 Generally

G. VACATING JUDGMENT

- § 9:32 Generally
- § 9:33 Procedure
- § 9:34 Motion to vacate may be brought in alternative courts
- § 9:35 Grounds
 - § 9:36 —Jurisdictional defect
 - § 9:37 —Defect in registration procedures
 - § 9:38 —Original judgment being appealed
 - § 9:39 Stay pending decision on motion
 - § 9:40 Determination of motion
 - § 9:41 No modification to the original judgment to be made by New York courts
 - § 9:42 —Determination may differ when original judgment based on default

H. STAY OF ENFORCEMENT

- § 9:43 Generally
- § 9:44 Grounds for granting stay
- § 9:45 —Question concerning whether original foreign judgment will be vacated
 - § 9:46 —Appeal pending in foreign state
 - § 9:47 —Stay of execution granted in foreign state
 - § 9:48 —Other grounds
 - § 9:49 Security required for stay
 - § 9:50 —Stay based on appeal
 - § 9:51 —Stay based on other grounds
 - § 9:52 Expiration of stay
 - § 9:53 —Stay pending appeal
 - § 9:54 —Stay based on other grounds

I. SISTER STATE JUDGMENTS NOT OBTAINED ON MERITS

- § 9:55 Generally
- § 9:56 Obtained by default in appearance

TABLE OF CONTENTS

- § 9:57 Obtained after judgment debtor appeared but upon later default
- § 9:58 Sister state child support judgments
- § 9:59 Judgment by confession

III. CIVIL ACTION TO ESTABLISH JUDGMENT

- § 9:60 Generally
- § 9:61 Methodology
- § 9:62 Only means available for default judgment or judgment by confession
- § 9:63 Jurisdiction
- § 9:64 Statute of limitations
- § 9:65 Denial of enforcement

IV. REGISTRATION OF FEDERAL JUDGMENTS

A. FINAL FEDERAL COURT JUDGMENTS

- § 9:66 Generally
- § 9:67 Federal authority
- § 9:68 Federal registration procedure
- § 9:69 —Certified copy of foreign judgment required
- § 9:70 —Transcript of judgment required
- § 9:71 —Judgment converted only upon completion of both procedures
- § 9:72 Article 54 procedure
- § 9:73 —Advantage of article 54

B. NONFINAL FEDERAL COURT JUDGMENTS

- § 9:74 Generally
- § 9:75 Compare independent actions to enforce nonfinal federal judgments
- § 9:76 Compare nonfinal federal judgments favoring United States Government

V. UNIFORM FOREIGN COUNTRY MONEY JUDGMENTS ACT

A. NEW YORK'S ADOPTION OF ACT

- § 9:77 Generally

B. SCOPE

- § 9:78 Generally
- § 9:79 Enforcement of judgments outside act

C. PREREQUISITES FOR ENFORCEMENT

- § 9:80 Generally
- § 9:81 Conclusiveness requirement
- § 9:82 —Exceptions
- § 9:83 Bases for foreign court's personal jurisdiction
- § 9:84 —Personal service
- § 9:85 —Voluntary appearance
- § 9:86 —Voluntary submission
- § 9:87 —Domiciliary or incorporation of defendant
- § 9:88 —Place of business
- § 9:89 —Operation of motor vehicle or airplane
- § 9:90 —Discretion of courts

**D. BASES FOR COURT'S DENIAL OF
ENFORCEMENT OF FOREIGN COUNTRY
JUDGMENT**

- § 9:91 Generally
- § 9:92 Insufficient notice
- § 9:93 Fraud
- § 9:94 Against public policy
- § 9:95 Conflict with other judgment
- § 9:96 Judgment contradicts other agreement between parties
- § 9:97 Forum was improper
- § 9:98 Integrity of Rendering Court
- § 9:99 Specific Proceeding Incompatible with Due Process

**E. DOMESTICATING FOREIGN COUNTRY
JUDGMENT**

- § 9:100 Generally

F. ENFORCEABLE ONLY AFTER DOMESTICATED

- § 9:101 Generally
- § 9:102 Jurisdiction over defendant not essential

G. STAY OF ENFORCEMENT PENDING APPEAL

- § 9:103 Generally
- § 9:104 Duration of stay

H. MONEY CONVERSION PROBLEMS

- § 9:105 Generally

TABLE OF CONTENTS

VI. FORMS

- § 9:106 Notice of motion for summary judgment in lieu of complaint—Form 9–1
- § 9:107 Affidavit in support of plaintiff's motion for summary judgment in lieu of complaint—Form 9–2
- § 9:108 Affidavit in support of plaintiff's motion for summary judgment in lieu of complaint (default judgment)—Form 9–3

CHAPTER 10. ENFORCEMENT OF NONMONEY JUDGMENTS

I. INTRODUCTION

- § 10:1 Generally
- § 10:2 Types of nonmoney judgments

II. JUDGMENT OR ORDER FOR POSSESSION OF REAL OR PERSONAL PROPERTY

A. INTRODUCTION

- § 10:3 Generally

B. ENFORCEMENT BY ISSUANCE OF EXECUTION

- § 10:4 Generally
- § 10:5 Deliver possession to judgment creditor
- § 10:6 —Removal of persons or encroachments from premises
- § 10:7 —Exception
- § 10:8 Alternative remedies available
- § 10:9 —Award of possession of real property or chattel
- § 10:10 —Levy upon any real or personal property of judgment debtor, as upon execution to enforce money judgment

C. CONTENTS OF EXECUTION

- § 10:11 Generally
- § 10:12 Description of property
- § 10:13 Designation of judgment creditor
- § 10:14 Compliance with CPLR 5230
- § 10:15 —Requirements of execution

D. ENFORCEMENT OFFICER IS NOT NECESSARILY SHERIFF

- § 10:16 Generally
- § 10:17 Within New York City

E. EFFECT OF DEATH OF PARTY AGAINST WHOM JUDGMENT AWARDS POSSESSION OF REAL PROPERTY

- § 10:18 Generally
- § 10:19 Twenty days notice required
- § 10:20 Service of order granting leave to issue execution

F. EXECUTION IS NOT LIMITED TO JUDGMENT

- § 10:21 Generally

III. JUDGMENTS AWARDED UPON SUMMARY PROCEEDINGS TO RECOVER POSSESSION

A. INTRODUCTION

- § 10:22 Generally
- § 10:23 Westchester County rule

B. WARRANT ISSUED BY COURT

- § 10:24 Generally
- § 10:25 Exception in New York City

C. NOTICE TO BE GIVEN

- § 10:26 Generally
- § 10:27 Service of notice by enforcement officer
 - § 10:28 —Personal service
 - § 10:29 —Suitable age or discretion
 - § 10:30 —Service by posting
 - § 10:31 —Additional mailing required
 - § 10:32 —Address for additional mailing on natural person
 - § 10:33 —Address for additional mailing on corporation, joint-stock, or other unincorporated association

D. HOW WARRANT IS EXECUTED

- § 10:34 Generally
- § 10:35 Persons removable

TABLE OF CONTENTS

E. TIME WITHIN WHICH WARRANT MAY BE EXECUTED

- § 10:36 Generally
- § 10:37 Special rules regarding New York City

F. EFFECT OF ISSUANCE OF WARRANT FOR REMOVAL OF TENANT

- § 10:38 Generally
- § 10:39 Tenant can remain on premises under certain conditions
- § 10:40 —Ongoing rent is paid
- § 10:41 —Judgment paid in full
- § 10:42 Result of warrant
- § 10:43 —Exception

G. ADDITIONAL RIGHTS OF JUDGMENT CREDITOR

- § 10:44 Generally
- § 10:45 Unpaid rent
- § 10:46 Reasonable use and occupancy

H. ERROR ON WARRANT

- § 10:47 Generally

IV. INTERRELATIONSHIP BETWEEN WARRANTS OF EVICTION AND BANKRUPTCY PROCEEDINGS

- § 10:48 Automatic stay
- § 10:49 Superseding warrant of eviction/automatic stay ineffective
- § 10:50 —Debtor has no interest in property
- § 10:51 Effect when bankruptcy filing supersedes issuance of warrant of eviction
- § 10:52 —Automatic stay lifted
- § 10:53 ——State law issues involved
- § 10:54 ——Payment of costs and delivery of undertaking will effect stay outside New York City

V. STAY OF WARRANT OF EVICTION

A. INTRODUCTION

- § 10:55 Generally

B. DISCRETIONARY STAYS OUTSIDE CITY OF NEW YORK

- § 10:56 Generally
- § 10:57 Deposit amount due or undertaking with clerk of court
 - Compare
- § 10:59 Deposit undertaking with clerk of court together with affidavit claiming possession of property
- § 10:60 —Respondent must pledge to preserve property

C. DISCRETIONARY STAYS IN PREMISES OCCUPIED FOR DWELLING PURPOSES IN CITY OF NEW YORK

- § 10:61 Generally
- § 10:62 Good faith application of occupant and occupant unable to secure suitable premises within neighborhood
- § 10:63 Good faith application of occupant unable to secure suitable premises within neighborhood—Deposit of full sums required
- § 10:64 —Inapplicable in case of objectionable occupant
- § 10:65 Stay of warrant in proceeding for breach of lease
- § 10:66 —Waiver of right to stay is void as against public policy

D. STAY OF PROCEEDING OR ACTION FOR RENT UPON FAILURE TO MAKE REPAIRS

- § 10:67 Generally
- § 10:68 Stay not granted
- § 10:69 Deposit by tenant to be made to court

E. STAY OF SUMMARY PROCEEDINGS UNDER CERTAIN CONDITIONS

- § 10:70 Generally

F. BROAD AUTHORITY OF COURT TO GRANT STAY

- § 10:71 Generally
- § 10:72 Power to grant stay of proceeding to recover possession of commercial property
 - Length of stay cannot be excessive
- § 10:74 —Tenant bears burden of demonstrating necessity for stay

TABLE OF CONTENTS

§ 10:75 —Court will not permit overly broad discovery demands by tenant

VI. ENFORCEMENT OF JUDGMENT OR ORDER FOR POSSESSION OF CHATTEL

A. POSSESSION OF CHATTEL AWARDED IN REPLEVIN ACTION

§ 10:76 Generally

§ 10:77 Value fixed where chattel not in possession of prevailing party

B. ENFORCEMENT OF ISSUANCE OF EXECUTION

§ 10:78 Generally

§ 10:79 Particularity of execution

§ 10:80 Execution to comply in all other respects with CPLR 5230

C. ENFORCING OFFICER TO DELIVER PROPERTY TO PREVAILING PARTY

§ 10:81 Generally

D. ENFORCING OFFICER TO PROCEED AS FOR MONEY JUDGMENT IF CHATTEL CANNOT BE FOUND

§ 10:82 Generally

E. SPECIAL REQUIREMENTS FOR UNIQUE CHATTEL

§ 10:83 Generally

§ 10:84 Determination of “uniqueness”

VII. ENFORCEMENT OF JUDGMENT OR ORDER DIRECTING SALE OF REAL PROPERTY

A. INTRODUCTION

§ 10:85 Generally

B. ENTRY OF JUDGMENT IN COUNTY WHERE PROPERTY IS SITUATED

§ 10:86 Generally

C. MANNER AND PLACE OF SALE

- § 10:87 Generally
- § 10:88 Property located in multiple counties
- § 10:89 Multiple locations

D. SALE TO BE HELD BY SHERIFF OR REFEREE

- § 10:90 Generally
- § 10:91 Only court to appoint referee
- § 10:92 Undertaking by referee
- § 10:93 Conveyance must state name of party
- § 10:94 Sale may be set aside for irregularity

VIII. JUDGMENT DIRECTING CONVEYANCE OF REALTY

- § 10:95 Generally
- § 10:96 Property outside state
- § 10:97 Property located within state

IX. APPOINTMENT OF RECEIVER FOR ENFORCEMENT OF NON-MONEY JUDGMENT

- § 10:98 Generally

X. ENFORCING OTHER JUDGMENTS OR ORDERS; CONTEMPT

- § 10:99 Generally
- § 10:100 Contempt under RPAPL

XI. FORMS

- § 10:101 Execution awarding possession of real property—Form 10-1
- § 10:102 Execution awarding possession of chattel or its value—Form 10-2
- § 10:103 Notice of motion for leave to issue execution for possession of real property after death of party against whom judgment has been awarded—Form 10-3
- § 10:104 Affidavit in support of motion for leave to issue execution for possession of real property after death of party against whom judgment has been obtained—Form 10-4
- § 10:105 Order authorizing issuance of execution for possession of real property after death of party

TABLE OF CONTENTS

	against whom judgment has been obtained—Form 10-5
§ 10:106	Warrant—Form 10-6
§ 10:107	Petition to recover possession of premises used or occupied for illegal purposes—Form 10-7
§ 10:108	Undertaking to stay issuance of warrant—Form 10-8
§ 10:109	Affidavit upon application for stay where tenant holds over in premises occupied for dwelling purposes in City of New York—Form 10-9
§ 10:110	Order to show cause upon application for stay where tenant holds over in premises occupied for dwelling purposes in City of New York—Form 10-10
§ 10:111	Order granting stay where tenant hold over in premises occupied for dwelling purposes in City of New York—Form 10-11
§ 10:112	Judgment after trial by court—Form 10-12
§ 10:113	Undertaking—general form—Form 10-13
§ 10:114	Affidavit in support of order to show cause to vacate judgment of foreclosure for irregularity in judicial sale—Form 10-14
§ 10:115	Order vacating judgment of foreclosure for irregularity in judicial sale—Form 10-15

CHAPTER 11. SATISFACTION OF JUDGMENTS

I. INTRODUCTION

§ 11:1 Generally

II. FULL OR PARTIAL SATISFACTION OF JUDGMENT

A. WHEN MONEY JUDGMENT IS SATISFIED

§ 11:2 Generally

B. SATISFACTION-PIECE

§ 11:3	Generally
§ 11:4	Requirements
§ 11:5	Execution
§ 11:6	—Judgment creditor
§ 11:7	—Designated party
§ 11:8	—Attorney of record for judgment creditor
§ 11:9	Place for filing

ENFORCING JUDGMENTS

- § 11:10 —Place of original entry or docketing
- § 11:11 —All counties where transcript docketed
- § 11:12 ——Purpose

C. DUTY OF JUDGMENT CREDITOR TO FILE SATISFACTION-PIECE WHEN JUDGMENT IS FULLY SATISFIED

- § 11:13 Generally
- § 11:14 Copy to be mailed to judgment debtor
- § 11:15 Ability of judgment debtor to file satisfaction-piece upon failure by judgment creditor to do so
- § 11:16 Liability for failure to file satisfaction-piece
- § 11:17 —Procedure
- § 11:18 —Exception
- § 11:19 —No statutory penalty when judgment only partially satisfied

III. ENTRY OF SATISFACTION

A. JUDGMENT SATISFIED BY VOLUNTARY PAYMENT

- § 11:20 Generally
- § 11:21 Compounding joint debtors

B. JUDGMENT DEBTOR UNABLE TO OBTAIN SATISFACTION-PIECE AFTER JUDGMENT HAS BEEN SATISFIED WHOLLY OR PARTIALLY

- § 11:22 Generally
- § 11:23 Notice must be given
- § 11:24 Procedure available when haste is essential

C. DEPOSIT OF MONEY WITH CLERK OF COURT

- § 11:25 Generally
- § 11:26 Notice to judgment creditor
- § 11:27 Notice to sheriff
- § 11:28 Entry of satisfaction made only upon court order
- § 11:29 —Motion on notice must be made
- § 11:30 —No outstanding executions on which sheriff's fees have not been paid can exist

D. ENTRY UPON RETURN OF EXECUTION BY SHERIFF

- § 11:31 Generally

TABLE OF CONTENTS

- § 11:32 Certified copy to be given to judgment debtor on request
- § 11:33 Small claims matters
- § 11:34 Entry upon certificate

IV. PRESUMPTION OF SATISFACTION

- § 11:35 Passage of twenty years
- § 11:36 —Exception

V. DUTY OF JUDGMENT CREDITOR TO DESTROY CERTAIN RECORDS

- § 11:37 Generally

VI. FORMS

- § 11:38 Satisfaction of judgment—Form 11-1
- § 11:39 Partial satisfaction of judgment—Form 11-2
- § 11:40 Power of attorney—Form 11-3
- § 11:41 Revocation of power of attorney—Form 11-4
- § 11:42 Order to show cause—Form 11-5
- § 11:43 Affidavit in support of motion to compel execution and filing of satisfaction-piece—Form 11-6
- § 11:44 Order compelling judgment creditor to execute and file satisfaction-piece—Form 11-7
- § 11:45 Demand for satisfaction-piece—Form 11-8
- § 11:46 Release of joint obligor (compounding joint debtor)—Form 11-9
- § 11:47 Notice of motion to direct clerk to enter satisfaction of judgment where satisfaction-piece cannot be furnished—Form 11-10
- § 11:48 Affidavit in support of motion to direct clerk to enter satisfaction of judgment where satisfaction-piece cannot be furnished—Form 11-11
- § 11:49 Order directing clerk to enter satisfaction of judgment where satisfaction-piece cannot be furnished—Form 11-12
- § 11:50 Order to show cause why clerk should not be directed to enter satisfaction of judgment where satisfaction-piece cannot be furnished—Form 11-13
- § 11:51 Order permitting deposit of money with clerk in satisfaction of judgment—Form 11-14
- § 11:52 Certificate of Conformity—Form 11-15

Table of Laws and Rules

Table of Cases

ENFORCING JUDGMENTS

Index