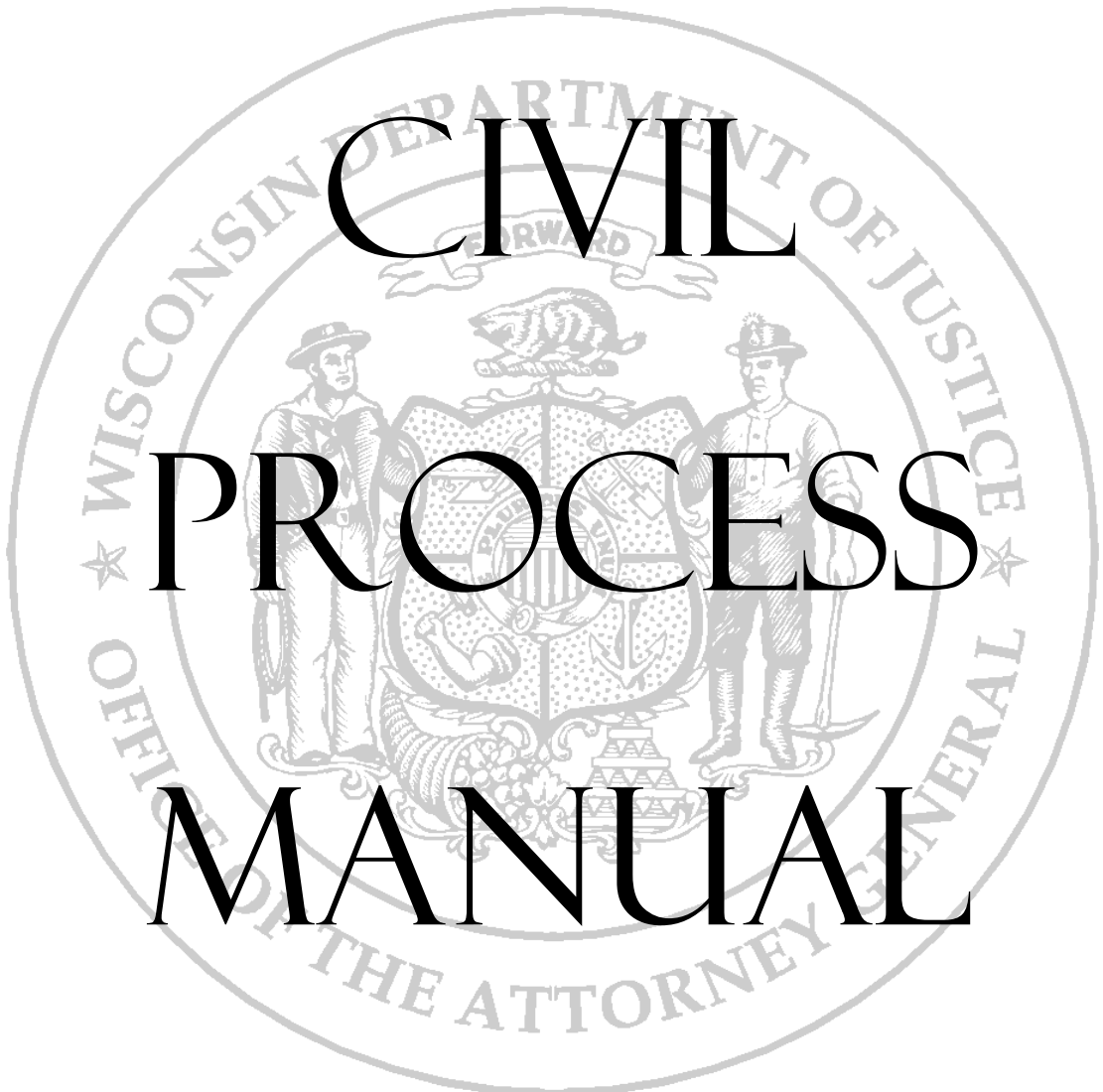


WISCONSIN DEPARTMENT OF JUSTICE
J. B. VAN HOLLEN, ATTORNEY GENERAL

The seal of the Wisconsin Department of Justice, Office of the Attorney General, is a circular emblem. It features a central shield with various symbols, including a plow, a sheaf of wheat, and a scale of justice. The shield is flanked by two figures: a Native American on the left and a pioneer on the right. Above the shield is a banner with the word "FORWARD". The outer ring of the seal contains the text "WISCONSIN DEPARTMENT OF JUSTICE" at the top and "OFFICE OF THE ATTORNEY GENERAL" at the bottom, separated by two stars.

CIVIL
PROCESS
MANUAL

JANUARY 2011



Dear Fellow Law Enforcement Official,

Since its original release in 2003, the Department of Justice's "Civil Process Manual" has proven to be a valuable tool for Wisconsin Law Enforcement. However, over the passage of time statutory changes and new perspectives compel periodic revisions to keep the manual fresh and timely.

I trust that this revised Manual will continue to prove beneficial as a vital resource for new and experienced servers of process alike. As always this Manual is not intended to circumvent local practice but rather is to be a general guide to some of the basic legal issues and requirements involved in the serving of process.

Sincerely,

A handwritten signature in black ink that reads "J.B. Van Hollen". The signature is written in a cursive, flowing style.

*J.B. Van Hollen
Attorney General*

CIVIL PROCESS MANUAL

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A revised manual such as this one is not possible without review input and constructive suggestions from professionals in the field. Wisconsin is blessed with many law enforcement officers who are highly knowledgeable in both the legal requirements and the practical applications of the service of process. Moreover these law enforcement professionals are highly motivated to help their fellow officers navigate the often complicated statutes that govern this technical area of law. While many officers assisted in the project in one way or another, the following people are singled out and recognized for their tireless and skilled efforts in assisting in the drafting and completion of the “Revised Civil Process Manual”.

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Deputy Brian Harter, Dane County Sheriff’s Office
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Deputy Steve Lewis, Saint Croix County Sheriff’s Office
Law Enforcement Clerk Sue Lukas, Vilas County Sheriff’s Office
Deputy Tonette May, Pierce County Sheriff’s Office
Deputy Roger D. Modrzejewski, Marathon County Sheriff’s Office
Lieutenant Rick E. Olig, Fond Du Lac County Sheriff’s Office
Lieutenant Joseph Sampson, Dane County Sheriff’s Office
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The text was written by Assistant Attorney General Dave Perlman of the Training and Standards Bureau of the Wisconsin Department of Justice.

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CIVIL PROCESS MANUAL

I. INTRODUCTION

Purpose and Goal of Manual

Since the Civil Process Manual was first distributed in 2003 it has been a guide to law enforcement officers in serving process. While the Manual has proven to be a valuable resource, over time there have been discussions and suggestions as to how to make the Manual even better. Moreover, some statutory changes have impacted on the law of service of process. Accordingly it was felt there was a compelling need to revise the Manual. The following represents the culmination of the revision process and is entitled “New and Revised Civil Process Manual”. The focus will continue to be on practical concerns and not on the history and evolution of the law. Whenever possible the manual will provide specific information with clear-cut instructions. However, as in most areas of the law, there are gray areas and in those situations the manual will only be able to offer suggestions. The manual is meant for statewide use and thus will limit its information to an overview of the various laws of service of process, which have statewide applicability. The manual can not and will not reference local concerns and practices. For those issues you are urged to consult your department procedures and policies. Also, this manual is not a substitute for consulting your corporation counsel on specific questions and issues.

Sheriff’s and Police Departments are called upon routinely to serve a myriad of legal papers. In Wisconsin, this critical function has been performed with distinction. However, as new laws with new requirements of service develop and old laws are revised there was a growing consensus among the law enforcement community that a manual with basic information and straightforward guidance was needed. It is hoped that this manual fills that need.

II. GENERAL INFORMATION

Statutory Basis

The sheriff’s department serves civil process because it is a duty required by Statute. Wisconsin Statute 59.27(4) reads that a sheriff:

“Personally, or by the undersheriff or deputies, serve or execute all processes, writs, precepts and orders issued or made by lawful authority and delivered to the sheriff.”

Since the service of process is a statutory duty of the sheriff it follows that this duty be executed in a professional manner, consistent with state law and department policy.

Priority in Serving Process

You will be given many different types of papers to serve and so it is important to attach priorities to them. An important priority is the time limitation to serving the paper. Take special note of those having short dates and serve those first. Unfortunately there may be occasions where the paper arrives to you with very little opportunity for you to serve it on time. Try your best to serve this paper even if you feel that the moving party was slower than necessary in getting this paper to you.

Another important priority is the potential threat to a person or property if timely service is not made. Examples would include temporary restraining orders and injunctions related to domestic abuse, child abuse, and/or harassment.

In all cases try to follow the instructions of the issuing attorney as to the time and place of service.

Do Not Give Legal Advice

The service of process will result in your being in constant contact with citizens, many of whom are in stressful situations. It is not uncommon for citizens being served to ask you for advice about the merits of their case or to request a recommendation as to an attorney. **Do not** give advice. **Do not** give legal advice or counsel. You may tell a person that he/she might want to contact an attorney for advice but **do not** suggest any particular attorney. Remember the statutes specifically prohibit you from acting as an attorney. Wisconsin Statute 59.30 reads as follows:

“No sheriff, undersheriff, deputy, coroner or medical examiner shall appear or practice as an attorney in any court, draw or fill up any writ, pleading or proceeding for a party in any action, nor, with the intent to be employed in the collection of any demand or the service of any process, advise or counsel any person to commence an action or proceeding; and for violation of this section every such officer shall forfeit not more than \$50.

Routine Duties Upon Receipt of Papers to be Served

- 1) Examine the paper and its copies to make sure they are valid. Check the relevant Wisconsin Statute and/or the appropriate section of this manual to determine what constitutes validity for the paper you have.
- 2) Note the amount of time for service and check the dates.
- 3) Determine who is to be served and how service can be completed.
- 4) Make certain that the copies are consistent with the original

Who May Serve

Civil cases: For civil cases, any law enforcement officer can serve anywhere in the state as **801.10** provides that in most civil actions an authenticated copy of the summons may be served by any adult resident of the state. It generally is prudent, however, for you to serve within your own jurisdiction because if anything goes wrong during the contact you can respond as a law enforcement officer because you will be in your jurisdiction.

Criminal cases: **968.04(4)** Arrest warrants or summons on criminal complaints should be served only by law enforcement officers within their own jurisdiction.

Note: Under the mutual aid statute, **66.0313**, a law enforcement officer may serve either a civil or criminal paper outside of their jurisdiction with full police powers if doing so upon request from a law enforcement agency in the host jurisdiction.

KEY POINTS

- ★ **Prioritize the papers and serve the papers with short dates first.**
- ★ **Do not give legal advice.**

III. COMPUTING TIME

Time can be a critical component in the service of papers. Many actions require specific time restraints as to service. Therefore it is critical for you to have an understanding on how time is computed.

Computation of Time for Proceedings in Chapters 801 to 847 - 801.15

Most of the papers you will serve arise from proceedings filed pursuant to statutes found between Chapters 801 to 847 of the Wisconsin Statutes. This includes but is not limited to large claim actions, writs of replevin, writs of attachment, garnishment, injunctions and restraining orders, and writs of executions to real and personal property. Additionally, there are actions filed outside of the scope of 801 to 847, which nonetheless specifically reference the same time computation method as used for actions arising in Chapters 801 to 847. Such actions include small claims, eviction actions, and writs of restitution (799.04(1)). Therefore in most, though not all cases, the papers that you serve the method of computing time is that set forth in 801.15. This method is as follows:

When the Period of Time is Less than Eleven Days - 801.15(1)(b)

In computing time frames of less than eleven days, Saturdays, Sundays and holidays shall be excluded in the computation. In other words all days to be counted when the time frame is less than eleven days are “working days.”

When the Period of Time is Eleven Days or Greater - 801.15(1)(b)

In computing time frames of eleven days or greater, Saturdays, Sundays, and holidays count in the computation.

First Day and Last Day

In computing time frames do not count the day from which the time period begins to run but you do count the last day unless, if applicable, it is a day when the clerk of courts office is closed.

Examples: (Assume no holidays) You receive a paper on Monday the 1st which must be served at least five days before the scheduled hearing date of Monday the 15th. This paper must be served no later than Monday the 8th. If served on the 8th, the counting would begin on Tuesday the 9th- go for four days that week and end on the fifth day, the hearing date of Monday the 15th (holidays and weekends excluded, first day not counted but the last day is counted).

You receive a paper on Monday the 1st, which must be served within 15 days from when you receive it. The paper must be served by Tuesday the 16th (holidays and weekends count in the computation, first day is not counted but the last day is counted).

Note: There will be other examples in the manual relating to time counting as to particular actions but the above represents the general method of counting.

Holidays

Legal Holidays are defined in Wisconsin State Statutes 230.35, 995.20 and 801.15 and include the following dates/days:

- January 1
- 3rd Monday in January (MLK Day)
- 3rd Monday in February (Presidents Day)
- Good Friday
- Last Monday in May (Memorial Day)
- June 19th (Juneteenth day)
- July 4th
- First Monday in September (Labor Day)
- September Primary Election Day
- 2nd Monday in October (Columbus Day)
- November General Election Day
- November 11th (Veterans Day)
- 4th Thursday in November (Thanksgiving day)
- December 24
- December 25
- December 31

(Holidays that fall on a Sunday, the next day, Monday, is regarded as the holiday)

SEE APPENDIX FOR TIMING CHART

KEY POINTS

- ★ **Do not count Saturdays, Sundays, and holidays if the time period involved is less than eleven days.**
- ★ **Count Saturdays, Sundays, and holidays if the time period is eleven days or greater.**
- ★ **Do not count the day from which the time period begins to run but do count the last day unless, if applicable, it is a day when the clerk of courts office is closed.**

IV. THE SERVICE (GENERAL)

You will be called upon to serve many kinds of papers for many kinds of legal actions. Later in this manual various types of paper will be discussed with specificity. Here, some general concepts of service applicable to all process are discussed.

Personal Service - 801.11(1)

Most legal documents are served by personally giving a copy to the person to be served. You should identify yourself to the citizen being served and inform the citizen of the contents of the paper without discussing the merits of the case. If the person has been properly identified and informed of the contents of the paper, yet refuses to accept the paper, you may lay the paper down or drop it at their feet and inform the party that they have been served. Be sure to document this on your certificate of service.

You must exercise reasonable diligence in effecting personal service. Reasonable diligence is not defined in the statutes. It has been interpreted by the courts to mean a pursuit of leads or information reasonably calculated to make personal service possible. Attempts should be made on different days, and different times of day. On the third attempt, if personal service can not be made, some papers can be served by substitute Check with your department policy as to reasonable diligence as most will have a minimum requirement as to attempts made to effect service.

Substitute Service - 801.11(1)(b)

If with reasonable diligence the paper can not be served personally, substitute service may be made.

Most courts have held that after three attempts at personal service on three different days, you may serve by substitute service. Unless specified by the plaintiff or courts, on the third attempt, if personal service cannot be made, some papers can be served by substitute service.

Pursuant to 801.11(1)(b) Wis. Stats., substituted service can be made by leaving a copy of the paper at the party's usual place of abode in the presence of some competent member of the family at least 14 years of age or in the presence of a competent adult, currently residing in the subject's usual place of abode. In either instance you should inform the party with whom the paper is left, of the contents of the paper without discussing the merits of the case.

There is no statutory definition of what is meant by "family member" but the case law suggests that to qualify as a family member the person must be part of the household. For instance, a Wisconsin case held that a daughter was not a family member because although related to the defendant she lived in a different household. Please check with your department policy as to this issue as it is likely it will specifically describe how it interprets "family member" for service purposes. The key is not just that the person is related to the person for whom personal service was not possible after due diligence but also that they are part of the same household.

Usual place of abode means the actual premises where the party sleeps, eats, and gets mail, etc. Competent means one who is capable of understanding the contents of the paper.

Service by Publication - 801.11(1)(c)

The plaintiff does Service by publication, if allowed, after you return the paper as unserved. Nevertheless it is useful for you to understand the general framework of this procedure.

If with reasonable diligence the defendant can not be served personally or by substituted service, service may be made by publication of the summons as a class 3 notice under Chapter 985 and by mailing. If the defendant's post-office address is known or can with reasonable diligence be ascertained there shall be mailed to the defendant, at or immediately prior to the first publication a copy of the summons and complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Pursuant to **801.13(2)**, a summons served by publication is deemed served on the first day of required publication.

Service on a Natural Person Under Disability - 801.11(2)

There will be times where you will be called upon to serve minors under the age of 14 years or any person under guardianship of any kind or any person without guardianship who is known to be incompetent. The service as to these individuals is governed by 801.11(2) Wis Stats whose rules are as follows:

Service on a Minor Under the Age of 14 - 801.11(2)(a)

Personal service on a minor under the age of 14 is accomplished by the following two steps:

- 1) Personal service of the minor and,
- 2) Personal service upon a parent or guardian having custody of the minor, or if there is none, upon any person having care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made on the child, then service of the summons shall also be made upon the guardian ad litem after one is appointed.

Personal Service of a Minor 14 years of Age or Older - 801.11(2)

A minor 14 years of age or older, who is not mentally incompetent and not otherwise under guardianship is served in the same manner as are adults.

Personal Service of a Person 14 years of age or Older who is known to be under a guardianship or if without guardianship is known to be incompetent to be in charge of his/her affairs - 801.11(2)(a)

If the person to be served is 14 years of age or older and is known to be under guardianship, service is made in the following manner:

- 1) Personal service on the individual, and
- 2) Personal service upon the guardian

If the person to be served is 14 years of age or older and is without guardianship but is known to be incompetent to handle his/her affairs, service is made in the following manner:

- 1) Personal service on the individual, and
- 2) Personal service to the guardian ad litem after one has been appointed

Service on the Sheriff - 59.31

Every writ, notice, or other paper required to be delivered to or served on any sheriff may be served by leaving the same at the sheriff's office during the hours it is required to be kept open. Personal service on the sheriff can be effected by delivery of the paper to any person belonging to the sheriff's office.

This statute and exception applies only to the Sheriff. There is no statutory exception for service on deputies or other law enforcement officers. Deputies and other Law Enforcement Officers are subject to the same personal service requirements as other citizens.

Service on the State - 801.11(3)

Personal service is made upon the state by delivering a copy of the paper to the attorney general or leaving them at the attorney general's office in the capitol with an assistant or clerk.

Service on other Public Corporations or Bodies Politic - 801.11 (4)

County - 801.11(4) 1

Personally serving the chairperson of the county board or the county clerk

Town - 801.11(4) 2

Personally serving the chairperson or clerk thereof

City - 801.11(4) 3

Personally serving the mayor, city manager, or clerk thereof

Village - 801.11 (4) 4

Personally serving the president or clerk thereof

Technical College District - 801.11 (4) 5

Personally serving the district board chairperson or secretary thereof

School District or School Board - 801.11(4)6

The president or clerk thereof.

Any Other Body Politic - 801.11(4)7

An officer, director, or managing agent thereof. In lieu of delivering the paper to an officer, director, or managing agent, the paper may be left in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

Domestic or Foreign Corporation - 801.11(5)

Personally serving the president or vice-president, superintendent, secretary, treasurer, cashier, director, trustee, managing agent or any other person who is apparently in charge of the office.

Non-Incorporated Business

Some small businesses are not incorporated. The face of such a paper would typically show a defendant and a business name, accompanied by “DBA”(doing business as) such as “John Jones, DBA Jones Window Cleaning”. If you receive such a paper treat it as an action against the named defendant and follow the standard rules of service as to an individual.

Attorney of Record - 801.14(2)

Once an action has been started and an attorney has appeared, subsequent papers in the action may be served on the attorney. If the attorney is not in his/her office the papers may be left with whoever is in charge in his/her absence. The papers may also be left at the attorney’s home in the same manner. If the attorney’s office or home address is unknown service can be made by leaving the paper with the Clerk of Courts. **Note:** The attorney must be an attorney of record and not a party to the action.

Service on state prison officers, employees or inmates - 302.025

Service within a Wisconsin State Prison may be made on the warden or superintendent of any prison as upon any other resident of this state. 302.025(1)

Except as provided by 302.025 (1) service of prison officer, employees, or inmates shall be made by the warden or superintendent or some person appointed by the warden or superintendent to serve process. 302.025(2)

This statute is specific to prisons, which are named in the statutes and does not apply to county jails. Inmates in county jails must be personally served, unless their attorney notifies the court to serve them instead, pursuant to 801.14 (2).

KEY POINTS

- ★ **You must exercise reasonable diligence in effecting personal service.**
- ★ **Reasonable diligence is not defined in the statutes but has been interpreted by the courts to mean a pursuit of leads or information reasonably calculated to make personal service possible.**
- ★ **Substituted service can be made by leaving a copy of the paper at the party’s usual place of abode in the presence of some family member at least fourteen years old or in the presence of a competent adult currently residing in the subject’s place of abode.**
- ★ **A family member should be part of the household.**
- ★ **Most courts have held that after three attempts at personal service, on three different days, you may serve by substitute service.**

V. SERVICE REQUIREMENTS AS TO PARTICULAR ACTIONS

You will serve papers for various types of court action. The following looks at each particular action, each with their own service requirement:

Restraining Orders and Injunctions - 813.12-813.128

Restraining Orders and Injunctions are commenced by petition, which are to be personally served upon the respondent, pursuant to 813.12(2). Unless otherwise specified within the petition this service can be accomplished right up to the time of the hearing. If the time of hearing arrives and service has not been made and the petitioner files an affidavit with the court stating that personal service was unsuccessful because the respondent was avoiding service by concealment or otherwise, the petitioner may serve the respondent by publication under Ch. 985 Wis. Stats and by mailing if the respondent's address is known or with due diligence can be found.

There are four types of restraining orders and injunctions and each have their own specific restrictions and requirements. The process to petition for, obtain, serve and enforce each of these is similar.

Petition: All restraining orders require the petitioner to file a petition with the courts. This petition contains information relating to the specific request as well as the reasons why the petitioner is asking for a restraining order. The petition is reviewed by a Court Commissioner or Judge and a decision is made regarding the petition.

The Court Commissioner or Judge may:

- A: Issue a Temporary Restraining Order and Notice of Hearing. This restraining order has specific requirements including no contact between the petitioner and the respondent and may require the respondent to be moved from the shared premises. You should read the actual Temporary Restraining Order to determine what if any action is required by the server. Be sure to check the "order" to ascertain whether or not it requires the sheriff to accompany the petitioner/protected person and assist in placing the petitioner/protected person in physical possession of his or her residence. Temporary Restraining Orders must be entered into the TIME system within 24 hours; or,
- B: Issue a Notice of Hearing without a Temporary Restraining Order. This is a notice to appear and must be served on the respondent. There are no restrictions and no temporary order, as it is just a notice for a court date and a notice regarding failure to appear. This notice is not entered into the TIME system; or,
- C: Deny the petition without a hearing or a restraining order. This is based on the merits of the petition and will not involve law enforcement.

Each order may provide for different actions by the serving party. Typically Temporary Restraining Orders for Domestic Abuse, Child Abuse and Individuals at Risk, will require the Sheriff to assist in the removal of the respondent from a residence. Harassment Temporary Restraining Orders may involve the removal of the respondent from a residence.

Injunction: After a hearing the Court Commissioner or Judge may issue an injunction which has specific prohibitions for a time period up to four years. If the respondent is present for the hearing, he/she is served a copy of the Injunction. If the respondent does not appear for the hearing, the Injunction may need to be served upon the respondent. If you are unable to serve the respondent, the injunction may still be able to be enforced if the respondent was served the initial notice of hearing. The notice of hearing informs the respondent that a failure to appear could result in an injunction being issued with specific restrictions.

Confidentiality of Victim's Address 813.12(5m) & 813.125(5m)

The petition, Temporary Restraining Order, Notice of Hearing and Injunction paperwork may not disclose the address of the alleged victim. The petitioner shall provide the clerk of circuit court with the petitioner's address when he or she files a petition under this section. The clerk shall maintain the petitioner's address in a confidential manner. The petitioner needs to contact the sheriff to verify the proof of service.

This statute does not prohibit the Sheriff from obtaining or maintaining the victim's address, however the Sheriff needs to be aware of the confidentiality provided by Wisconsin Statutes.

Surrender of Firearms - 813.12(4m)

Certain injunctions may require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action was commenced. When a respondent surrenders a firearm to the sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered. The receipt shall include the manufacturer, model and serial number of the firearm and shall be signed by both the respondent and the sheriff. The sheriff shall keep the original receipt and provide a copy to the respondent. When the firearm is returned to the respondent the sheriff shall surrender to the respondent the original receipt and all copies of the receipt in his/her possession. The sheriff may store the firearm surrendered to him/her in a warehouse that is operated by a public warehouse keeper licensed under Chapter 99 and the respondent shall pay the costs charged by the warehouse for storing the firearm. Pursuant to court order, the firearms may be turned over to a court approved person in lieu of turning them over to the Sheriff.

Small Claims Actions - 799.12

Service of small claims actions can be accomplished in one of two ways.

- 1) Personal service in the standard way with the possibility for substitute service if after due diligence the party can not be found.
- 2) The plaintiff may serve a small claims action by mail if the circuit court in the jurisdiction where the action is filed has a rule which so authorizes this procedure. If this method is used the original and necessary copies of the paper along with the appropriate fees are left with the clerk of court for mailing. Service is deemed to have occurred when the paper is mailed.

Timing Requirement for Small Claim Actions - 799.05(3)

Small claim actions (except for small claim eviction actions) must be served at least 8 working days before the date the party must appear. The date of appearance shall be not less than 8 working days from the issue date and no more than 30 days from the issue date.

In measuring the time, the 8 days begins with the first working day after the issue date. In measuring the 30 days, holidays and weekends count in the computation and the count begins with the first day after the issue date. If the 30th day is a day when the clerk of court is closed then the 30th day would be the first day after that when the clerk of court is open.

Examples: (Assume no holidays) If small claims action is issued on Monday March 10th, the earliest date for the hearing is March 20th- (8 working days beginning with the first working date after issuance and assuming no holidays). The last possible date for the hearing is April 9th (30 days including holidays and weekends from the first day after issuance)

In the above examples the paper for the March 20th hearing must be served on the date of issuance, March 9th, 8 working days before the day of the hearing and the paper for the April 9th hearing must be served by March 30th, 8 working days before the day of the hearing.

Small Claims Actions-Eviction - 799.16(3)

This paper is to be served personally on the defendant or through substituted service if after due diligence the defendant can not be found, consistent with the time limits described below.

If personal or substituted service can not be accomplished, service can be accomplished by posting a copy on the premises involved and mailing a copy to the defendant, consistent with the time limits described below.

Timing for Eviction Actions - 799.05(3)(b)

Personal or Substituted Service- In eviction actions the return date shall be not less than 5 working days nor more than 30 days from the issue date. The paper must be served not less than 5 working days prior to the return date.

Examples: (Assume no holidays) If eviction action was issued on Monday March 10th, the earliest the return date could be is Monday March 17th. This allows little time for service, as it must be accomplished no later than the date of issue, March 10th.

If eviction action was issued on Monday March 10th the latest the return date could be is Wednesday April 9th. Service must be accomplished by Tuesday April 2nd.

Service of Eviction Action by Posting and Mailing (typically this service is done by the plaintiff) - 799.16(3)

When Applicable

If the paper is returned more than 7 days prior to the return date with proof that the defendant cannot be served with personal or substituted service then service can be made by posting and mailing. This process is typically done by the plaintiff or his/her attorney and so it is important that you notify these parties of your inability to serve personally or by substitution early enough so that they can comply with the following described time restrictions.

Posting- This is accomplished by affixing a copy of the paper onto some part of the premises where it may be conveniently read. This posting must occur at least 7 days prior to the return date. Additionally, at least 5 days prior to the return date an additional copy of the paper must also be mailed to the defendant at the last-known address even if it is the premises, which are the subject of the action.

Example: (Assume no holidays) Paper issued on Monday March 10th with a return date of Wednesday April 9th. Personal or substituted service could not be achieved. Paper is returned with proof that the defendant could not be served with personal or substituted service on Monday, March 24th. The posting must occur no later than Monday March 31st as that is seven working days prior to the return date. The mailing must occur no later than Wednesday, April 2nd, as that is 5 working days prior to the return date.

When the Paper is Returned Less than 7 Days Prior to the Return Date - 799.16(3)(b)

When the paper is returned less than 7 days prior to the return date with proof that the defendant cannot be served with personal or substituted service, posting and mailing are not possible. In such a circumstance the court on the return date shall adjourn to a date not less than 7 days from the original return date and service should be accomplished by posting and mailing in the manner described above.

Writ of Restitution - 799.45

In an eviction action, if the court finds that the plaintiff is entitled to possession, the court may order a writ of restitution. No writ shall be executed if received by the sheriff more than 30 days after its issuance. The issuance date is the date the court orders a writ of restitution and not the date the writ is obtained from the clerk of courts.

Example: At the March 10th eviction hearing the court orders a writ of restitution. The sheriff receives this writ on April 20th. This writ can not be lawfully executed as it was received more than 30 days after its issuance.

If the court determines that there is hardship to the defendant it may stay the issuance of a writ by a period not to exceed 30 days from the date of the order of judgement. In this circumstance the sheriff must receive the writ no more than 30 days after the 30-day stay from the date of judgement has expired.

Example: The date of judgement is March 10th. The court stays the issuance of the writ until March 20th. The sheriff must receive the writ no later than April 19th.

Upon the timely delivery of a writ of restitution and after payment to the sheriff of the requisite fee the sheriff shall execute the writ. The sheriff shall execute the writ within 10 working days of the receipt of the writ.

Example: The sheriff receives a timely writ on Monday March 10th along with the required fee. This writ must be executed no later than March 24th, as that is ten working days from the date of receipt of the writ.

Handling and Executing a Writ of Restitution - 799

While each agency may have specific procedures for handling writs, the following are general guidelines for handling writs:

Determining if the writ is valid on its face

- Check if the writ received within the appropriate time limit
- Check to see if the address is within your county
- Check to see if the writ is signed/sealed by a Judge/Court Commissioner or Clerk
- Check to see that that the names and case number are completed

Service of the Writ

- Some agencies attach a letter or notice to the writ, explaining the date the defendant needs to move out and the removal process
- Serve the writ, noting the type of service and who was served.
- If no one is home, post the writ on the door and document this on the service sheet.

Duties of the Sheriff in Executing a Writ of Restitution - 799.45(1)(2)

Prior to executing the writ of restitution the sheriff may require that the plaintiff deposit a reasonable sum representing the probable cost of removing the defendant's property and of the deputies services. In executing the writ of restitution the sheriff shall:

- 1) Remove from the premises described in the writ the defendant and all other persons found upon the premises claiming under the defendant, using such reasonable force as is necessary.
- 2) Remove or supervise removal from the premises described in the writ all personal property found in the premises not the property of the plaintiff, using such reasonable force as is necessary.
- 3) Assist the plaintiff or his or her agent in the removal, under 799.45(3)(am), of all personal property found in the premises described in the writ, which is not the property of the plaintiff, using such reasonable force as is necessary.
- 4) Exercise ordinary care in the removal or supervision of removal of all persons and property from the premises and in the handling and storage of all property removed from the premises.

Manner of removal and disposition of removed goods - 799.45(3)

In accomplishing the removal of property from the premises described in the writ, the sheriff is authorized to engage the services of a mover or trucker unless the plaintiff notifies the sheriff under 799.45(3)(am) that the plaintiff will remove and store or dispose of the property.

799.45(3)(am) When delivering a writ of restitution to the sheriff in counties other than counties with a population of 500,000 or more, the plaintiff or his or her attorney or agent may notify the sheriff that the plaintiff or the plaintiff's agent will be responsible for the removal and storage or disposal of the property that is found in the premises described in the writ and that does not belong to the plaintiff. When notifying the sheriff that the plaintiff or the plaintiff's agent will remove the property, the plaintiff or his or her attorney or agent shall file the bond or insurance policy required under subd. 5, with the clerk of court that issued the writ of restitution. If the sheriff is notified that the plaintiff or the plaintiff's agent will be responsible for the removal and storage or disposal of the property under this paragraph, the sheriff shall, in executing the writ of restitution, supervise the removal and handling of the property by the plaintiff or the plaintiff's agent. The sheriff may prevent the plaintiff or the plaintiff's agent

from removing property under this paragraph if the plaintiff or the plaintiff's agent fails to comply with subd. 1., 2., 5. or 6. or if the plaintiff or the plaintiff's agent fails to exercise ordinary care in the removal and handling of the property as required under subd. 3. If the plaintiff or the plaintiff's agent remove and store the property under this paragraph, the plaintiff or the plaintiff's agent shall do all of the following:

- 1) Notify the sheriff not later than the date on which the sheriff executes the writ of restitution of the address of the premises where the defendant's property will be stored.
- 2) Notify the sheriff not later than the date on which the sheriff executes the writ of restitution of the name, address and telephone number of the person the defendant may contact to obtain possession of the property.
- 3) Exercise ordinary care in removing the property from the premises and in the handling and storage of all property removed from the premises.
- 4) Have warehouse or other receipts issued with respect to the property stored under this paragraph issued in the name of the defendant.
- 5) Obtain a bond or insurance policy to pay the defendant and indemnify the sheriff for any damages to the property removed from the premises that is handled or stored with less than ordinary care.
- 6) Impose charges for the removal and storage of the property removed from the premises that do not exceed the rate determined by the sheriff to be the average rate for such services available in the county.
- 7) Within 3 days of the removal of the property, notify the defendant under 799.45(4) of the charges imposed under 799.45(3)(am)(6) and of any receipt or other document required to obtain possession of the property.

799.45(3)(b) Except as provided in pars. (am) and (c), the property removed from such premises shall be taken to some place of safekeeping within the county selected by the sheriff. Within 3 days of the removal of the goods, the sheriff shall mail a notice to the defendant as specified in sub. (4) stating the place where the goods are kept and, if the plaintiff had not removed the property under par. (am), shall deliver to the defendant any receipt or other document required to obtain possession of the goods. Warehouse or other similar receipts issued with respect to goods stored by the sheriff under this subsection shall be taken in the name of the defendant. All expenses incurred for storage and other like charges after delivery by the sheriff or by the plaintiff to a place of safekeeping shall be the responsibility of the defendant. Any person accepting goods from the sheriff or the plaintiff for storage under this subsection, or the plaintiff, if he or she stores the property in his or her premises, shall have all of the rights and remedies accorded by law against the defendant personally and against the property stored for the collection of such charges, including the lien of a warehouse keeper under s. 407.209. Risk of damages to or loss of such property shall be borne by the defendant after delivery by the sheriff to the place of safekeeping.

799.45(3)(c) When, in the exercise of ordinary care, the sheriff determines that property to be removed from premises described in the writ is without monetary value, the sheriff or the plaintiff, if he or she has agreed to remove the property under par. (am), may deliver or cause the same to be delivered to some appropriate place established for the collection, storage and disposal of refuse. In such case the sheriff shall notify the defendant as specified in sub. (4) of the place to which the goods have been delivered within 3 days of the removal of the goods. The exercise of ordinary care by the sheriff under this subsection does not include searching apparently valueless property for hidden or secreted articles of value.

799.45(3)(d) All of the rights and duties of the sheriff under this section may be exercised by or delegated to any of the deputies.

Point of Interest - “Lock in Place”: While not authorized by statutes or case law, some agencies are doing a “lock in place” when executing a writ of restitution. A “lock in place” occurs when the Sheriff obtains a bond from the plaintiff and subsequently removes the tenant from the premises. The landlord then changes the locks on the premises and “stores” the property at the same location that had been previously rented or leased. Check and see if this procedure is permitted by your county.

Return of Writ, taxation of additional costs 799.45(5) Within 10 days of the receipt of the writ, the sheriff shall execute the writ and perform all of the duties required by this section and return the same to the court with the sheriff’s statement of the expenses and charges incurred in the execution of the writ and paid by the plaintiff.

When the Removal can be done by the Plaintiff - 799.45(3)

In counties other than Milwaukee County, if certain conditions are met, the landlord may choose to be responsible for the removal, storing, or disposal of property that is found on the premises and does not belong to the plaintiff. In such a circumstance the landlord will have to obtain a bond or insurance policy to pay the defendant and indemnify the sheriff for any damages to the property removed from the premises that is handled with less than ordinary care.

NOTE: Pursuant to Wisconsin Statute 846.35 Tenants have specific rights/protections when residential rental property is the subject of a foreclosure action. Many times these do not involve the Sheriff but you should be aware of them.

KEY POINTS

- ★ **Temporary Restraining Orders start with a petition to the courts. The courts have three options; 1) issue a TRO with a court date, 2) issue a court hearing without a TRO or 3) to deny the petition.**
- ★ **There are now 4 types of Temporary Restraining Orders/Injunctions: Domestic Abuse, Child Abuse, Individuals at Risk and Harassment.**
- ★ **Small claims actions (except for small claim eviction actions) must be served at least eight working days before the party must appear. The date of appearance shall be not less than eight working days from the issue date and no more than thirty days from the issue date.**
- ★ **In eviction actions the return date shall be not less than five working days or more than thirty days from the issue date. The paper must be served not less than five working days prior to the return date.**
- ★ **No writ of restitution shall be executed if received by the sheriff more than thirty days after its issuance.**
- ★ **In counties other than Milwaukee County, if certain conditions are met, the landlord may choose to be responsible for the removal, storing, or disposal of property that is found on the premises and does not belong to the plaintiff. In such a circumstance the landlord will have to obtain a bond or insurance policy to pay the defendant and indemnify the sheriff for any damages to the property removed from the premises that is handled with less than ordinary care.**

Large Claims- claims over \$5,000 - **801.02(1); 801.11(1)**

The paper must be served within 90 days of filing. If after due diligence the party can not be found then substituted service is to be employed. If with reasonable diligence the party can not be served personally or by substituted service, the plaintiff may attempt service by publication of the summons as a class 3 notice under ch.985 and by mailing. If the defendant's post-office address is known or can with reasonable diligence be ascertained there should be mailed to the defendant, at or immediately prior to the first publication a copy of the summons and complaint. The mailing may be omitted if the defendant's post-office address can not be found with reasonable diligence.

Divorce Petition - **767.085(3)**

The petition for divorce should be served in the standard way; personally served on the opposing party and if that is not possible after reasonable diligence by substituted service and if that is not possible by publication. If the parties together initiate the action with a joint petition, service is not required. **Note:** Many departments have policies, which prohibit substituted service for divorce actions.

Additionally a copy of the petition should be served upon the family court commissioner of the county in which the action is begun, whether such action is contested.

Actions to Enforce Judgement of Child Support - **767.027(1)**

In any action to enforce a judgement or order of child support, service can be accomplished by the following:

- 1) A diligent effort is made to ascertain the location of the respondent.
- 2) Written notice of the action has been delivered to the most recent residential address or employer address provided by the respondent to the child support agency.

Garnishment Complaint - **812.07**

A garnishment is an action whereby a creditor attempts to satisfy his/her claim by seizing assets that belong to the debtor but are in the hands of a third party.

The debtor is called the "Principal Defendant." The party who is being served and is holding the assets due to the debtor is called the "Garnishee Defendant."

The following is the service procedure for all garnishment actions except the garnishment of earnings:

The summons and complaint shall be served on the "Garnishee Defendant" in conformity with the standard procedure. The statute requires the garnishee to receive a \$3 garnishment fee before being required to file an answer so you typically will be serving a check in this amount in addition to the summons and complaint.

If the "Garnishee Defendant" is named by a partnership name, service may be made upon any partner. Additionally notice of such service or a copy of the garnishee summons and complaint, together with the summons in the principal action, shall be served on the "Principal Defendant" in the standard way no later than 10 business days after service on the "Garnishee Defendant."

Example: A corporation is the “Garnishee Defendant” and John Doe is the “Principal Defendant.”

Service of the garnishee summons and complaint is made on an officer of the corporation on Monday, March 10th. A notice of this service or a copy of the garnishee summons and complaint, together with the summons in the principal action, must be served on John Doe no later than Monday March 24th.

Garnishment of Earnings - 812.35(2)(3)(4)

Earnings means compensation paid or payable by the garnishee for personal services, whether designated as wages, salary, commission, bonus or otherwise, and includes periodic payments under a pension or retirement program.

To commence an earnings garnishment proceeding, the judgement creditor files a garnishment notice with the clerk of courts. Upon receipt of the notice and appropriate fee the clerk of court issues two earning garnishment forms. These two garnishment forms are to be served in the following manner:

- 1) Within 60 days after the filing of the notice, one of the two earning forms are served upon the debtor by first class mail, or certified mail with return receipt requested, or by any means permissible for the service of a summons in a civil action other than by publication.
- 2) Within 60 days after the filing of the notice, the other earning form is served upon the garnishee in the same ways as described in 1) as well as by any other means if the garnishee signs an admission of service.

In addition, the creditor shall serve on the debtor at the same time the earnings form is served 1) an exemption notice, 2) an answer form, and 3) schedules and worksheets. Also served at this time is the \$15 fee to the earnings garnishee for each earnings garnishment.

Service should be made first on the garnishee. Service on the debtor shall be made within 7 business days after the date of service on the garnishee and at least 3 business days before the payday of the first pay period affected by the garnishment. Service by mail is complete upon mailing.

Subpoenas - 885.03; 885.06

Any subpoena may be served by any person by exhibiting and reading it to the witness, or by giving the witness a copy thereof, or by leaving such copy at the witness’s abode.

Except when subpoenaed on behalf of the state, of a municipality in a forfeiture action, or of an indigent respondent in a paternity action, witness fees should accompany the subpoena.

KEY POINTS

- ★ **A large claim action must be served within ninety days of filing**
- ★ **The statutes require the “garnishee defendant” to receive a \$3 garnishment fee before being required to file an answer so you typically will be serving a check in that amount in addition to the summons and complaint.**
- ★ **Notice of service or a copy of the garnishee summons and complaint, together with the summons in the principal action shall be served on the “principal defendant” no later than ten business days after service on the “garnishee defendant.”**
- ★ **In a garnishment of earnings action service should first be made on the garnishee. Service on the debtor shall be made within seven business days after the date of service on the garnishee and at least three business days before the payday of the first pay period affected by the garnishment.**

Terminating Tenancy - 704.21(1)

This is one of the few examples of civil process, which can be served by a party to the action, i.e. the landlord. These are notices to notify the tenant that his/her tenancy is being terminated for various reasons. They are to be served by one of the following methods:

- 1) By giving a copy of the notice personally to the tenant or leaving a copy at the tenant’s usual place of abode in the presence of some competent member of the tenant’s family at least 14 years of age who is informed of the contents of the notice;
- 2) By leaving a copy with any competent person apparently in charge of the rented premises or occupying the premises or a part thereof, and by mailing a copy by regular or other mail to the tenant’s last known address;
- 3) If after reasonable diligence, notice can not be served in the manners described above, by affixing a copy of the notice in a conspicuous place on the rented premises where it can be conveniently read and by mailing a copy by regular or other mail to the tenant’s last known address.

Notice of Mortgage Foreclosure - 815.31(1)(2)(6)

The sheriff who makes the sale of mortgaged premises, under a judgement, shall publicly advertise the sale by posting a written notice describing the real estate to be sold with reasonable certainty in **one** public place in the town or municipality where such real estate is to be sold at least three weeks prior to the date of sale and also in **one** public place of the town or municipality where such real estate is situated if it is not in the town or municipality where the sale is to be held. If the county maintains a website, the notice shall also be posted on the county website.

Examples:

- 1) Property located in same municipality as the sale requires posting in one location in that municipality.
- 2) Property located in municipality A, sale being held in municipality B. One posting required in municipality A and one posting required in municipality B.
- 3) The Notice lists property in 2 municipalities. (more than one property listed on the same notice.) The notice must be posted in one location within the municipality of sale, one within municipality of each property listed on the notice. This could result in one notice being

posted in municipality A, one in municipality B and one in municipality C for a total of three notices.

A copy of the notice of sale shall be printed each week for six successive weeks in a newspaper of the county prior to the date of sale.

The Wisconsin Supreme Court has held that six successive weeks is defined as forty two days.

Every sale shall be at auction between 9 o'clock in the morning and 5 o'clock in the afternoon, Monday thru Friday.

Notice of Sale Requirements: (815.29, 815.31 & 846.16)

- 1) Description of the real estate to be sold.
- 2) Legal Description is required, and most will contain a physical address also.
- 3) Date and Time of Sale
- 4) Place of sale
- 5) Deposit or down payment requirements.

What to do when receiving a notice of foreclosure

Upon receiving the Notice of Mortgage Foreclosure, review the document to verify the following:

- 1) Is the property located within your county?
- 2) Can the Notice be posted at least 3 (three) weeks prior to sale?
- 3) Is the sale location, time and date correct?
- 4) Is the Sheriff's information correct?

Posting the Notices of sale 815.31 requires the posting in one public place, which is defined as "exposed to general view", "accessible to or shared by all members of the community." (Public parks, buildings open to the public, municipal posting boards, poles, etc.)

815.35 Execution; taking down notice. If any person shall take down or deface any notice of a sale upon execution put up by any officer, previous to the day of sale therein specified, unless upon satisfaction of the execution or upon the consent of the parties to the action, such person shall be liable to the party suing out such execution in the sum of \$50.

59.27(12) Sheriff's Duties - Bankruptcy Before conducting a sale of foreclosed property, contact the clerk of the federal bankruptcy court to determine whether the court has granted a stay of relief on that property.

Eastern District of WI – Bankruptcy Court Info:
<http://www.wieb.uscourts.gov/>
877-781-7277

Western District of WI – Bankruptcy Court Info:
<http://www.wiw.uscourts.gov>
(800) 743-8247

815.37 Execution Sale; officer not to purchase. The officer to whom any execution shall be directed and the officer's deputy holding any execution and conducting any sale in pursuance thereof shall not, directly or indirectly, purchase any property at such sale; and every purchase made by such officer or deputy, or to the officer's or deputy's use, shall be void.

815.31(5) Adjournment of Sale. If at the time appointed for any such sale the sheriff considers it in the interest of all persons concerned, the sheriff may adjourn the sale from time to time, not exceeding in all 3 months. In case of such adjournment public notice thereof shall be given at the time and place fixed for the sale. If the adjournment shall be for more than one day further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

NOTE: Adjournment for “more than one day” requires further notice. A good guideline is as follows:

Sale adjourned for less than 2 weeks, verbal notice at initial sale date.

Sale adjourned for 2-4 weeks, reposting of notice of sale should be done.

Sale adjourned for more than 4 weeks, reposting of notice and republication should be done. (publication is not required to be for another full six weeks, depending on new date of sale.

Sale Procedure – Best Practice

- 1: Read the Notice of Sale
 - a: Case Number
 - b: Parties involved
 - c: Address/legal description
 - d: Terms listed on the notice
 - e: Any other notices or announcements
- 2: Open bidding (Some agencies permit the plaintiff to fax or email an opening bid)
 - a: If Plaintiff is not present and has not submitted an opening bid, see 815.31(5)
 - b: If plaintiff is present and no one bids, note this on the paperwork and submit report to courts.
 - c: Accept and record bids until one party is successful bidder.
 - 1: Does the successful bidder meet the terms of the sale?
 - a: 10% down payment pursuant to notice of sale
 - 2: If yes, announce a successful sale and release any other bidders for this property.
 - 3: If bidder does not meet terms of sale, declare the sale invalid and start the sale over.
Note this on the Sheriff's report of sale.
- 3: Sale Results
 - a: If property is sold to the plaintiff or a party to the action, no further action is necessary on the sale date.
 - b: If the successful bidder is a third party, (not a party to the action), collect their information, (name, address, phone, Social Security Number, FEIN etc). Collect the down payment and provide receipt or escort the bidder to the Clerk of Courts to make the down payment pursuant to the terms of sale.

Sheriff's Report of Sale - 846.16. The sheriff or referee who makes sale of mortgaged premises, under a judgment therefore, shall give notice of the time and place of sale in the manner provided by law for the sale of real estate upon execution or in such other manner as the court shall in the judgment direct; where the department of veterans affairs is also a party in the foreclosure action, the judgment shall direct that notice of sale be given by registered mail, return receipt requested, to the department at Madison, Wisconsin, at least 3 weeks prior to the date of sale, but such requirement does not affect any other provision as to giving notice of sale. The sheriff or referee

shall, within 10 days thereafter, file with the clerk of the court a report of the sale, and shall also immediately after the sale first deduct any fee due under s. 77.22 (1); then deposit that fee, a return under s. 77.22 and the deed with the clerk of the court for transmittal to the register of deeds; then deduct the costs and expenses of the sale, unless the court orders otherwise, and then deposit with the clerk of the court the proceeds of the sale ordered by the court. The sheriff may accept from the purchaser at such sale as a deposit or down payment upon the same not less than \$100, in which case such amount shall be so deposited with the clerk of the court as above provided, and the balance of the sale price shall be paid to the clerk by the purchaser at such sale upon the confirmation thereof. If the highest bid is less than \$100, the whole amount thereof shall be so deposited.

Check the report of sale to verify the information is correct.

- 1: Case number, County, Parties, legal description.
- 2: Is the report accurate, does it describe what actually occurred at the sale.
- 3: Sale price listed is the actual successful bid from date of sale.
- 4: Proper documents included or attached
 - a: Proof of Publication (must have been published six weeks prior to sale date, a total of forty two days.)
 - b: Affidavit or Certificate of Posting
 - c: Original Notice of Posting
 - d: Sheriff's Deed – Correct Land description and physical address.
 - e: Electronic Real Estate Transfer Receipt and Electronic Real Estate Transfer Return.
 - 1: Sheriff is not the Preparer, Sheriff should be listed at the "Grantor's Agent."
 - 2: Real Estate Transfer Fee if third party sale.
- 5: Once all of the above documents have been reviewed and deemed to be accurate, the Sheriff shall sign the Report of Sale and file it with the Clerk of Courts.

Writ of Assistance - 815.63 & 815.11

Upon confirmation of sale hearing, the successful bidder is granted ownership of the property. If the tenants of the property fail to remove their items from the property or maintain residence there, the new owner may file a request with the courts for a Writ of Assistance, pursuant to 815.63.

815.63 Sheriff's deed; writ of assistance. Whenever title has been perfected to any real estate sold on execution, or to any part or interest in the real estate, and the defendant in execution, or any other person claiming under the defendant by title accruing subsequently to the entry of the judgment in the judgment and lien docket upon which the judgment was issued, shall be in possession of that real estate or part or interest in that real estate, and, upon demand of the person in whom the title has been perfected, refuses to surrender the possession, the person may apply to the court from which the execution issued, by verified petition, for a writ of assistance to obtain possession. A copy of this petition, with a notice of the time and place when and where the petition will be presented, shall be served upon the person against whom the writ is issued at least 10 days before the petition is presented. The petition may be served as a summons in an action in the circuit court. The court may direct the writ to issue, and the writ shall be executed and return made in the same manner as upon a sale upon a judgment for foreclosure of a mortgage.

815.63 - ANNOT. **Cross-references:** *The general provision for writs of assistance is s. 815.11.*

815.11 Writs of assistance. When any order or judgment is for the delivery of possession of property real or personal the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

A Writ of Assistance is handled similar to a Writ of Restitution, with two exceptions. A Writ of Assistance is valid for 60 days after issuance and may be issued by the courts anytime after the Confirmation of sale hearing. (see writs of restitution section)

846.35(3) Execution of writ of assistance or restitution. No writ of assistance or writ of restitution for the removal of a tenant whose tenancy is terminated as a result of a foreclosure judgment and sale may be executed before the end of the 2nd month beginning after the month in which the sale of the property is confirmed, unless the tenant has waived in writing the right under [sub. \(2\) \(a\) 1.](#) to retain possession of the rental unit.

(Writs of Restitution must be received within 30 days of issuance where a Writ of Assistance can be issued by the court anytime after the Confirmation of sale hearing. AND Writs of Restitution must be returned to the courts within 10 working days of receipt by the Sheriff where a Writ of Assistance is valid for 60 days from issuance.)

Notice of Sale of Personal Property - 815.29

Notice of the sale shall be posted in one public place of the town or municipality where the sale is to be had at least 20 days before the date of sale. The sale must be made between 9 o'clock in the morning and 5 o'clock in the afternoon. The property for sale must be viewable at the time and location of sale, when the sale involves personal property.

Correction of Sheriff's Deed – 706.085

Correction of errors on the Sheriff's Deed is covered under Wisconsin Statute 706.085, specifically:

- 1) 706.085(2)(a), who prepares and signs the document.
- 2) 706.085(2)(b)1 thru 706.085(2)(b)3.c., requirements.
- 3) 706.085(2)(c) notification to parties involved

Notice of Probate - 879.05

Notice required in the administration of an estate or other probate proceeding shall be served in one of the two following ways:

- 1) Service shall be made by first class mail either within or without the state at least 20 days before the hearing or proceeding upon any person whose post-office address is known or can with reasonable diligence be ascertained, or
- 2) Personal service shall be made at least 10 days before the hearing in the standard way except service shall not be made by publication and substituted service may not be made outside the state.

KEY POINTS

- ★ **A terminating tenancy action is one of the few examples of civil process which, can be served by a party to the action, i.e. the landlord.**
- ★ **The sheriff who makes the sale of mortgaged premises, under a judgment, shall advertise the sale by posting a written notice in one public place in the town or municipality where such real estate is to be sold at least three weeks prior to the date of sale and also in one public place in the town or municipality where such real estate is situated if it is not in the town or municipality where the sale is to be held. If the county maintains a website, the notice shall also be posted on the County website.**
- ★ **A copy of the Notice of Foreclosure sale shall be printed each week for six successive weeks in a newspaper of the county prior to the date of sale. Six successive weeks has been defined as forty two days.**
- ★ **Adjournment of the sale for more than one day may require further posting and publication.**
- ★ **Notice of sale of personal property shall be posted in one public place in the town or municipality where the sale is to be held at least twenty days before the date of the sale.**
- ★ **Writs of assistance, issued after the confirmation of sale, are valid for sixty days and are enforced similar to a writ of restitution.**

Notice for Appointment of Guardian for Incompetent, Minor, or Spendthrift - 54.38(2) 55.09

The notice of hearing for the appointment of a guardian for an incompetent must be served personally upon the proposed incompetent and existing guardian, if any, at least 10 days before the time set for hearing. If the proposed incompetent is in custody or confinement the notice shall be served by registered or certified mail on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent.

The notice of hearing for the appointment of a guardian for minors is served as follows:

Service of the notice shall be made as described below to all of the following persons if applicable:

- 1) The subject minor's spouse.
- 2) The subject minor's parents, except no notice need be served on parents whose rights have been judicially terminated.
- 3) The subject minor if he/she is over 14 years of age unless the minor appears at the hearing.
- 4) Any other person, agency, institution, welfare department or other entity having the legal or actual custody of the minor.

Service of the above shall be accomplished by either:

- 1) First class mail either within or without the state at least 20 days before the hearing or proceeding upon any person whose post-office address is known or can with reasonable diligence be ascertained, or
- 2) Personal service in the standard way except that service can not be made by publication and substituted service may not be made outside of the state.

A spendthrift is statutorily defined as a person who because of the use of drugs, intoxicants, or of gambling, idleness or debauchery is unable to attend to business.

The notice of hearing for the appointment of a guardian for a spendthrift shall be personally served on the proposed spendthrift at least 10 days before the date of the hearing.

Replevin - Chapter 810

Replevin is an action to regain personal property unlawfully held or retained by another. Replevin can be filed as a small claim action if the value of the property claimed does not exceed \$5,000 and is filed as a large claim if the value exceeds \$5,000. Service rules are the same as for more conventional small claim or large claim actions. They are:

Replevin as a Small Claims Action - 799.05

The paper must be served eight business days before the return date. The return date for the summons served must be not less than eight business days from the issue date nor more than 30 days from the issue date.

Service of small claims actions can be accomplished in one of two ways:

- 1) Personal service in the standard way with the possibility for substitute service if after due diligence the party can not be found.
- 2) By mail if the circuit court in the jurisdiction where the action is filed has a rule which so authorizes this procedure. If this method is used the original and necessary copies of the paper along with the appropriate fees are left with the clerk of court for mailing. Service is deemed to have occurred when the paper is mailed.

Replevin as a Large Claims Action - 801.02

The paper must be served within 90 days of filing. If after due diligence the party can not be found then substituted service is to be employed. If with reasonable diligence the party can not be served personally or by substituted service, service may be made by publication of the summons as a class 3 notice under ch.985 and by mailing. If the defendant's post-office address is known or can with reasonable diligence be ascertained there should be mailed to the defendant, at or immediately prior to the first publication a copy of the summons and complaint. The mailing may be omitted if the defendant's post-office address can not be found with reasonable diligence.

Writs of Replevin

Writs of replevin can be issued pre-judgment or post judgment. These writs can be somewhat involved and place extra responsibilities on the sheriff. Be sure to determine if you have a pre or post judgment replevin.

- 1) A pre-judgment replevin action must consist of the following when accepted and executed by the Sheriff's Office:
 - a) summons
 - b) affidavit or complaint
 - c) bond
 - d) bond approval by a judicial officer
 - e) requisition to the sheriff

- 2) When the plaintiff is seeking immediate delivery of the property the complaint must show or the affidavit must so state the following: **810.02**
 - a) the plaintiff or someone acting on the plaintiff's behalf must show that the plaintiff is entitled to the property claimed
 - b) that the property is being wrongfully detained and there should be an exact description of the property
 - c) the alleged cause of the detention according to the plaintiff's best knowledge, information and belief
 - d) that the property has not been taken for a tax, assessment or fine or seized under any execution or attachment against the property of the plaintiff, or that if so seized it is exempt from the seizure
 - e) the value of the property, and
 - f) the location of the property claimed by the plaintiff with sufficient specific factual allegations for the judge or judicial officer to determine that there is reason to believe that the property is in the location described or in the possession of the defendant or any person acting on behalf of, subject to or in concert with the defendant.
- 3) Upon the issuance of an order directing the return of property and upon execution of a bond in an amount approved by the judge and with sufficient sureties approved by the judge, the sheriff shall take the property from the defendant or such persons as are acting on behalf of, in concert with or under control of the defendant, and deliver possession of the property to the plaintiff. **810.03**
- 4) If the property to be taken is in a building or enclosure the sheriff may demand its delivery. If the property is not delivered the sheriff shall advise the plaintiff of the refusal of the delivery and the plaintiff may then apply for a search warrant and upon delivery of the search warrant the sheriff may then enter and take the property. **810.09**. This "civil" search warrant is served by the Sheriff. There are no statutory time limit requirements for a civil search warrant, although the warrant should be served within a reasonable time.
- 5) The sheriff shall keep the property taken in a secure place and deliver it to the party entitled thereto upon receiving the sheriff's lawful fees for taking and the sheriff's necessary expenses for keeping the same. **810.10**

A Post Judgment Replevin is ordered by the courts after a judgment has been imposed. This writ is then directed to the Sheriff of the County where the items are located. When reviewing a Writ of Replevin, be sure the form is completed, including:

- 1) Directed to the Sheriff of your county.
- 2) Gives a detailed description of property to be seized, including serial numbers.
- 3) Signed by the Clerk of Courts, Judge or Court Commissioner.
- 4) Provides the necessary Plaintiff and Defendant information.

A bond may or may not be necessary based upon the facts of the writ and any reasonable doubt that may exist.

Once received by the Sheriff, this writ must be returned to the courts within sixty days.

As writs of replevin can be complex be sure to read the entire paper before you start and make all arrangements for removal and storage before you seize.

KEY POINTS

- ★ **Replevin, as a small claims action must be served eight business days before the return date. The return date for the summons served must be not less than eight business days from the issue date nor more than 30 days from the issue date.**
- ★ **Replevin as a large claims action must be served within 90 days of filing.**
- ★ **Civil Search warrants are served by the Sheriff and should be served within a reasonable time after issuance.**

Attachment - Chapter 811

The writ of attachment is a paper issued by the judge on request of the plaintiff at any time after a summons and complaint has been filed but before final judgement. The writ is directed to the sheriff of the county in which the property is located and requires the sheriff to attach all the property of the defendant within the county or so much thereof as may be sufficient to satisfy the plaintiff's demand, together with costs and expenses.

If the attachment is asking for a dollar amount the sheriff does not have to guess as to what property he/she should have to tag. In such a circumstance the plaintiff should arrange for a supplemental hearing to assess what property the respondent has so that he/she can then give the sheriff an attachment with the property specifically listed.

Before the writ of attachment can be executed a bond on the part of the plaintiff shall be filed with the court in an amount set by the judge issuing the writ. No bond is necessary when the plaintiff is the state, or any county, town or municipality, therein. **811.06**

Upon receipt of the writ of attachment the sheriff shall without delay seize so much of the property of the defendant in the sheriff's county that will satisfy the plaintiff's demands with costs and expenses and make an inventory thereof. The sheriff shall arrange for all the personal property attached to be appraised by two disinterested residents of the county who shall be first sworn by the sheriff to make a true appraisal. **811.10**

The sheriff shall serve copies of the writ, the affidavit, bond, and inventory upon the defendant in the same manner as a summons.

Writs of Execution - Chapter 815

Once a party has obtained a judgement against another they may enforce that judgement in a manner provided by law. A judgement, which requires the payment of money or the delivery of property, may be enforced by execution.

There are three kinds of executions: 1) an execution against the property of the judgement debtor, 2) an execution against the judgement debtor's person, and 3) an execution for the delivery of property.

Writs of execution can be quite involved and therefore are difficult to capsulize in a manual. Whenever you receive a writ of execution please refer to Chapter 815 of the statutes as it sets forth the procedures for the various writs involved. Also writs of execution can involve procedures

which are discussed earlier in the manual. (See section on sale of personal property and section on notice of foreclosure.)

The following is a discussion of some of the basic general concepts of writs of execution.

When a Writ is Issued - 815.04

A writ of execution may be issued after a judgment has been recorded and perfected. The writ may be issued at any time within 5 years of the rendition of the judgment. Writs are valid for 60 days and may be renewed as necessary until the judgment is satisfied or expires.

How the Writ is Issued - 815.05

The writ of execution shall be issued from the circuit court where the judgment, a certified copy of the judgment, or the transcript of the municipal judge's judgment is filed. The execution shall be directed to the sheriff or in the circumstance where the sheriff is an interested party, to the coroner.

In order for the writ of execution to be valid under the statute the following information about the judgment should be present:

- 1) The writ (original) must contain the seal of the court and must be signed by the clerk of circuit court
- 2) The county where the judgment or a certified copy of the judgment or transcript is filed
- 3) The names of the parties
- 4) The amount of the judgment, if it is for money
- 5) The amount due on the judgment
- 6) The time of entry in the judgment and lien docket in the county to which the execution is issued

Other paperwork to check at this time, would include but not limited to:

- 1) Bond – For value of property being taken, pursuant to your policy.
 - a) Indemnification of the Sheriff and the county.
 - b) Value of Bond, does it meet the criteria of your policy/state statute.
 - c) Court case numbers, parties to the case.
 - d) Required signatures (Plaintiff or plaintiff's agent, Bond agent)
 - e) Property to be taken may be listed on the bond.
 - f) Power of Attorney paperwork.

815.24 - Indemnity may be required. If there is any reasonable doubt as to the ownership of the property or as to its liability to be taken on the execution the officer may require sufficient security to indemnify the officer for levying upon such property.

NOTE: If other property needs to be moved to access the property being seized, these items should also be included in the bond.

- 2) Attachments – Supplemental hearing information or information provided by plaintiff.
If the paperwork meets the above criteria, it is deemed to be valid on its face.

If there is specific property listed on the writ, with serial number or unique identifiers, check for liens on these items through your local resources. (Wisconsin DOT, Register of Deeds)

Fees: Determine the necessary fees associated with the writ.
Service fee and Mileage
Commission Fee 814.70(5)

814.70(5) - Collection of money. For collecting and paying over all sums upon any execution, writ or process for the collection of money, 10% on the first \$300; 5% on the next \$300 or any part thereof; and 3% on any excess over \$600; but the whole fee may not exceed \$60. Any storage and moving fees to include the cost of holding the property until the time of sale.

BEST PRACTICES:

Steps to attempt to satisfy the Writ:

- 1: Attempt to locate the defendant/debtor.

If you are unable to locate the defendant or any property owned by the defendant within your county you should return the writ to the courts unsatisfied.

If you are unable to locate the defendant but you locate property owned by the defendant within your county you should contact the plaintiff and ask how they wish to proceed.

If the plaintiff wishes to proceed, many agencies require prepayment of the fees prior to seizure. SEE BELOW for actual sale procedures.

If you are able to locate defendant/debtor contact the defendant and make demand for total amount of the judgment, including Sheriff's fees.

If the Defendant/debtor makes full payment, provide a receipt for cash with court/Sheriff's case number, plaintiff, and deputy signature.

NOTE: Checks: Based on your policy, the check is made either to the Sheriff or plaintiff. If the check is made to the Sheriff, the Sheriff should contact the bank to determine if there are enough funds and converts the check to a bank check. (NOTE: there may be additional costs incurred at this step)

If the check is made to the Plaintiff, based on your policy you may either forward the check to the plaintiff or make arrangements for the defendant to get the check to the plaintiff. This is a third party process and the writ is returned unsatisfied by the Sheriff, the plaintiff or defendant needs to file the satisfaction with the courts.

If defendant is unable to pay the total amount you should contact the plaintiff to determine what steps they wish you to proceed with.

The possible options for the plaintiff include,

- 1) A payment plan through the Sheriff or directly with the plaintiff – partial payments must be often enough and large enough to satisfy the judgment in a reasonable time.

Partial payment (Cash only): Defendant makes one payment to pay part of the judgment but does not agree to a payment plan. The payment should be large enough

as it relates to the total judgment due. Provide a receipt, attempt to collect the balance within the sixty days, if not then return it partially satisfied.

- 2) If the defendant is unable or unwilling to make any payments and based on your contact, observations and investigation, you are unable to locate any property to be seized, notify the plaintiff of your findings and return the writ to the courts unsatisfied.

If, based on your contact, observations and investigation, you find there is property that could be seized, contact the plaintiff to discuss the following:

1. Request a supplemental hearing to determine what property the defendant has an interest in and could be seized. The results of the hearing should provide the plaintiff with a listing of property that can be seized. This property should be listed on or attached to the writ. The writ can order the property to be turned over to the plaintiff to satisfy the judgment or it can order the sale of the property at a Sheriff's Sale.
2. If there is no response to a supplemental hearing, and you are able to locate personal or real property belonging to the defendant, the Sheriff may seize enough personal property to satisfy the judgment and if there is not enough personal property, the Sheriff may seize real property to satisfy the judgment. 815.05(1s).

815.05(1s) - If the execution is against the property of the judgment debtor, the execution shall require the officer to whom it is directed to satisfy the judgment out of the personal property of the debtor, and if sufficient personal property cannot be found, out of the real property belonging to the judgment debtor on the day when the judgment was entered in the judgment and lien docket in the county or at any time thereafter.

Seizure, Storage and Sale of Seized property:

Once you have determined the defendant can not pay and does have assets to be seized to satisfy the judgment and you have researched liens on the assets you should inform the plaintiff of the costs of seizing and sale of property. Prior to the actual seizure of property, you need to estimate the costs associated with this seizure, to include but not limited to: Moving, Storage, Appraisal fees, Sheriff's Fees, Sale fees, Bond Fees and any known liens. Prepayment of these fees (excluding the liens) may be required prior to any action by the Sheriff. (If the cost of the seizure including liens is more than or close to the value of the property, it may not be worthwhile seizing the property.)

It is suggested that you start a file for the seizure, as this helps with organization. Line up the storage location/facility, appraisal services, towing agency, any forms you may need to fill out and the time line you are going to follow in order to get the sale done. There are a number of forms you will need:

- Certificate of appraisal 814.72/815.19
- Public Sale On Execution (one for posting)815.29(1)
- Affidavit of Posting –Needs to be notarized
- Seizure document (additional forms if necessary)
- Sale closure forms for Court packet (inventory forms/sale sheets, running costs)

During this time make sure you have the plaintiff attorney on board in case a civil search warrant is needed to secure property. Seize property (In Your County ONLY) using seizure tags. Be sure you have the necessary resources ready when you conduct the seizure. Things to consider are the removal, inventory, appraisal, personnel, and storage of items. Compare the property being seized to your paperwork prior to taking any property. Appraisal of property forms filled out and prior to that follow 811.10. *{Start file to serve on defendant after sale}* Appraisers must be first sworn in by sheriff and they must be disinterested residents of your county. Make copies of the appraisals for file and for court return packet.

The sale

1. Sale of Property Notice done/Date of sale set
 - 1 posting fill out completely and affidavit done
 - 20 day time line 815.29(2)
 - You may want to ask the plaintiff's attorney to advertise for better attendance at auction.
 - Have copies of statute 815.18 handy (exemptions)
2. Day of sale follow 815.29
 - Sale held between 9am and 5 pm
 - Property available to view at sale location
 - Consider whether the defendant notified the court/you of any exemptions under statute 815.18(6) also check 815.19 (2) if applicable and whether the court has granted the exemptions.
 - Most agencies require cash payment at time of sale or up to 4 hours after, if applicable...this should be listed on the notice of sale and announced prior to the sale
3. After Sale...
 - Complete the following files
 - Court report along with the applicable paperwork as it relates to sale report/make sure you stamp documents
 - Disburse payments, Sheriff's fees, liens and then to the plaintiff unless there is a court order detailing the payments.
 - Serve copies on the defendant pursuant to 811.10

Optional: Till Taps

Another way to satisfy a judgment is to perform what is commonly called a "Till Tap". This procedure is performed routinely on businesses that are currently operating and the owner has failed to make arrangements for payment. Review the execution against property to assure it is valid on its face. Obtain a bond of indemnification of the Sheriff. Upon arrival at the business, identify yourself and make the initial demand for payment to satisfy the judgment. The Deputy can physically "seize" the cash register and take any cash from inside the register. If the defendant refuses to open the register, the Deputy can remove the register and forcibly open the register to retrieve any cash inside. When removing cash from the register, be sure to provide a receipt to the defendant. Some agency policies permit a Deputy to seize business safes pursuant to a till tap. Prior to doing this, it is advisable that you contact your County Corporation Counsel's office for an opinion before proceeding.

This "till tap" procedure can be repeated on a daily or weekly basis until the judgment is satisfied. (The initial writ is valid for sixty days and may need to be renewed to continue this procedure.)

811.10 - Directions to sheriff; several writs.

811.10(1) The sheriff shall without delay seize so much of the property of the defendant, in the sheriff's county, as will satisfy the demand of the plaintiff, with costs and expenses, and make an inventory thereof; the sheriff shall cause all personal property attached by the sheriff to be appraised by 2 disinterested residents of the county, who shall be first sworn by the sheriff to make a true appraisal thereof, which appraisal shall be signed by them, and the appraisal and inventory shall be returned with the writ; the sheriff shall serve copies of the writ, affidavit and bond, and inventory, upon the defendant in the same manner as a summons. In case of a nonresident or a foreign corporation the sheriff shall serve the copies of the writ, affidavit and bond, and inventory, on any agent of such defendant in the county, if any be known to the sheriff.

811.10(2) If 2 or more writs against the same defendant shall be executed on the same property an inventory and appraisal shall be made in but one of the actions, and the sheriff shall endorse on the copy served upon the defendant in the other action a notice that the property seized is the property seized in the action in which the inventory and appraisal are made, giving the title of the action; and the officer shall state in his or her return the fact of such endorsement.

814.72 - Fees of appraisers. For appraisals under s. 815.19, each appraiser shall collect a fee of \$8, plus \$10 per hour. The fee shall be paid by the officer and returned as a disbursement on the writ of attachment or execution.

814.70(10) - Personal property; possession and storage. All necessary expenses incurred in taking possession of any goods or chattels and preserving the same as shall be just and reasonable in the opinion of the court.

815.19 - Levy on personal property; appraisal.

815.19(1) Personal property shall be bound from the time it is seized. Whenever personal property is seized on attachment or execution and any part of the property is exempt and the exemption is claimed by the debtor or the debtor's spouse, the officer making the seizure shall, upon request by either of them, or may upon the officer's motion, cause the exempt property to be appraised by 2 disinterested freeholders of the county, who shall first be sworn by the officer to make a true appraisal thereof, which appraisal shall be in writing, be signed by the appraisers and be prima facie evidence of the value of the property appraised. The appraisal, together with the true inventory of all the property seized, shall be returned with the writ. The fees of the appraisers are prescribed in s. 814.72.

815.19(2) If the property seized is an automobile which is appraised and can be sold for more than \$1,000 or if the property seized is a tractor used in farming operations which is appraised and can be sold for more than \$1,500, the officer may sell such automobile or tractor and out of the proceeds of such sale the officer shall pay to the debtor or the debtor's spouse the exempted value of such automobile or tractor. The balance of the proceeds of such sale shall be applied on the execution or attachment.

Bankruptcy: If at any time during this process the defendant advises you that they have filed for bankruptcy. Ascertain the name of their attorney, case number (if assigned), have they actually filed or are they “going to get an attorney”. At this point, based on the information provided, you may wish to contact the bankruptcy attorney or bankruptcy court to determine if this action is actually being filed. If bankruptcy has been filed, the writ is returned to the courts unsatisfied. Subsequently you may receive another writ if/when the bankruptcy court resolves this issue.

Property Exempt from Execution - 815.18

By statute there is certain property which is exempt from execution. These exemptions are motivated by the specific statutory intent to allow debtors and their dependents the means of obtaining a livelihood, to enjoy property necessary to sustain life and opportunity and to avoid becoming public charges. These exemptions are recited in specificity in 815.18 Wis Stats.

815.18(6)(a) - Property Exempt from Execution

(a) A debtor shall affirmatively claim an exemption or select specific property in which to claim an exemption. The debtor may make the claim at the time of seizure of property or within a reasonable time after the seizure, but shall make the claim prior to the disposition of the property by sale or by court order. Exempt property is not exempt unless affirmatively claimed as exempt. With respect to property partially exempt under this section, the claiming of an exemption includes the process of selection required of the debtor. The debtor or a person acting on the debtor's behalf shall make any required affirmative claim, either orally or in writing, to the creditor, the creditor's attorney or the officer seeking to impose a lien by court action upon the property in which the exemption is claimed. A debtor waives his or her exemption rights by failing to follow the procedure under this paragraph. A contractual waiver of exemption rights by any debtor before judgment on the claim is void. The court, in making a determination as to the extent property is reasonably necessary for the support of the debtor and the debtor's dependents, is not limited to the standard of living to which the debtor and the debtor's dependents have become accustomed. The court shall consider the amount and use of any income of any person claimed as a dependent when determining if that person is a dependent of a debtor.

SALE OF PERSONAL PROPERTY

815.29 - Notice of sale of personal property, manner, adjournment.

815.29(1) No execution sale of personal property shall be made unless 20 days previous notice of such sale has been given by posting notices thereof in one public place of the town or municipality where such sale is to be had, and posted on the county website, if the county maintains a website, specifying the time and place of sale but when any property seized is likely to perish or depreciate in value before the expiration of the 20 days the court or a judge may order the same to be sold in such manner and upon such terms as the best interests of the parties demand. Every such sale shall be made at auction between the hour of 9 a.m. and 5 p.m. and no property shall be sold unless it is in view of those attending the sale, except in the case of the sale of the interest of the judgment debtor in property in the possession of a secured party. It shall be offered for sale in such lots and parcels as is calculated to bring the highest price.

815.29(2) Such sale may be adjourned as provided in s. 815.31 for sale of real estate.

LEVY ON REAL PROPERTY

815.195 - Levy on real property; how made. Levy of execution on real property is made by endorsing on the execution a description of the property on which the levy was made, and recording the execution, so endorsed, in the office of the register of deeds.

BEST PRACTICE: This is accomplished in the following manner:

Obtain the tax information sheet from the County Treasurer where the property is located.

Normally the Plaintiff will provide this.

Send the legal description of the property along with the Original execution to the Register of Deeds for recording.

Send a copy of the execution and the original return to the Clerk of Courts to be filed with the court file.

Send a copy of both documents to the judgment creditor.

When the recorded execution comes back, forward this to the judgment creditor and keep a copy for your records.

815.38 - Execution, certificate of sale, recording.

815.38(1) Upon the sale of real estate on execution the officer making the same shall make out and subscribe duplicate certificates of such sale containing a particular description of the premises sold; the price bid for each distinct lot or parcel; the whole consideration money paid; and the time when such sale will become absolute and the purchaser will be entitled to a conveyance pursuant to law and shall record one of the duplicate certificates within 10 days after the sale in the office of the register of deeds and shall deliver the other to the purchaser. If there are 2 or more purchasers a certificate shall be delivered to each.

815.38(2) Promptly following every execution sale the sheriff shall return the execution into court and record with it a detailed report of his or her doings upon the execution.

OTHER ISSUES:

If the defendant or defendants attorney say they have filed papers to halt action, or they have filed an appeal, the defendant or defendants attorney need to provide the Sheriff with paperwork to substantiate this. You may need to do some additional research before proceeding with any seizures.

If the plaintiff prevails in the action to halt or the appeal, the plaintiff or plaintiff's attorney needs to provide the Sheriff with a new writ to execute.

The following is a list of requirements as to various kinds of executions. This list is not all-inclusive. (For a complete list see Chapter 815.05.)

Executions Against Property - 815.05(1s)

If the execution is against the property of the judgement debtor, the execution requires the officer to whom it is directed to satisfy the judgement out of the personal property of the debtor. If not enough sufficient personal property can be found, the judgement should be satisfied out of the real property belonging to the judgement debtor on the day the judgement was entered in the judgement or lien docket or at any time thereafter.

Real Estate - 815.05(2)

If real estate has been attached and a judgement rendered, the execution may direct a sale of the defendant's interest in the real estate.

Judgement to Enforce a Lien - 815.05(3)

Upon a judgement to enforce a lien upon specific property, the execution shall direct the officer to sell the interest that the defendant had in that specific property at the time the lien had attached.

Execution Against the Person - 815-05(5)

If the execution is against the person of the judgement debtor, the execution shall require the officer to arrest the judgement debtor and commit him/her to the county jail until the judgement debtor pays the judgement or is discharged according to law.

Sale of Unclaimed Property - 171.06

Courts can issue an order directing the Sheriff to sell unclaimed property pursuant to an affidavit filed with the courts on unclaimed property. This order directs the Sheriff to sell, at public auction, the unclaimed property after giving 60 days notice, pursuant to 171.06. This statute also directs the proper disbursement of the proceeds of the sale.

171.06 - Unclaimed property, how disposed of. When any property is not perishable or subject to decay and is not claimed and taken away within one year after it was received, it may be sold as follows: The person in whose custody the property is, or the person's agent or attorney, may make an affidavit of the facts and present the same to a judge or supplemental court commissioner of the county in which the property is located and such judge or supplemental court commissioner shall immediately issue an order requiring the sheriff or any constable of the county to sell the property at public auction, giving 60 days' notice of the time and place of the sale to the consignor, the consignee and the custodian of the property. This notice shall be in writing and served personally or by mail upon the persons whose names and residences are known. If the name or residence of any of the persons is unknown and cannot be ascertained with reasonable diligence, the sheriff or constable shall make an affidavit of this fact and shall publish a class 3 notice, under ch. 985, in the county. At the time and place of the sale the sheriff or constable shall sell the property at public auction and shall make a full return of the sheriff's or constable's proceedings under the order to the judge or supplemental court commissioner issuing the order, together with proof of service or publication of the notice of the sale, and an inventory of the property sold and the proceeds of the sale after deducting the sheriff's or constable's fees. From the proceeds of the sale the judge or supplemental court commissioner shall pay all legal charges that have been incurred in relation to the property, including the charges of the person in whose custody the property was when the proceedings were begun, or a ratable proportion of each charge if the proceeds of the sale are not sufficient to pay all of the charges. The judge or supplemental court commissioner shall immediately pay any balance remaining over to the treasurer of his or her county, with a copy of all proceedings in the matter. The county treasurer shall file the copy in his or her office. The person in whose custody the property is when any proceeding for the sale is commenced shall immediately notify the consignor and consignee of the sale, in writing, and served by leaving a copy thereof with the consignor and consignee, personally or by mail.

171.065 - Disposition of proceeds. If the owner of property sold under this chapter or the owner's legal representatives, at any time within 5 years after proceeds from the sale have been deposited in the county treasury, furnishes satisfactory evidence to the treasurer of the ownership of the property, the owner or the owner's legal representatives shall be entitled to receive the amount of the proceeds deposited with the treasurer. If the owner or the owner's legal representatives do not claim the sale proceeds within the 5-year period, the proceeds shall belong to the county.

County to Which Execution Shall be Issued - 815.07

When the execution is against the property of the judgement debtor, the execution may be issued to the sheriff of any county where the judgement is entered in the judgement and lien docket.

When the execution requires the delivery of real or personal property, the execution shall be issued to the sheriff of the county where the property or some of the property is located. Executions may be issued at the same time to different counties.

Sheriff's Endorsement - 815.08

Upon receipt of any writ of execution, the sheriff or other officer shall note thereon the year, month, day, and hour of the day when the sheriff or other officer received it.

Habeas Corpus - 782.10

The writ of habeas corpus is served, by delivering a copy of the same, to the person to whom it is directed, and if such person can not be found, service is made by leaving a copy at the jail or other place in which the prisoner may be confined with any underofficer or other person of proper age, having charge of such prisoner. The service of the writ is not complete until the party serving the writ tenders to the custodian of the prisoner the fees allowed for bringing up the prisoner and other appropriate fees.

Mandamus and Prohibition - Chapter 783

Writs of mandamus and of prohibition shall be served upon the court and the party to whom it shall be directed.

KEY POINTS

- ★ **A writ of execution is valid for sixty days and may be issued at any time within five years after a judgment has been recorded and perfected.**
- ★ **The writ of execution shall be issued from the circuit court where the judgment, a certified copy of the judgment, or the transcript of the municipal judge's judgment is filed.**
- ★ **There is certain property, which is exempt from execution. These exemptions are recited in specificity in 815.18 Wis Stats.**
- ★ **When executing a writ of execution, the Sheriff shall first attempt to satisfy the judgment out of the debtor's personal property, then out of real property.**

VI. Special Situations and Statutes

Search Warrants - 968.15 (1); 968.17

A search warrant must be executed within 5 days of date of issue. Holidays and weekends count in this time computation. The search warrant must be returned to the clerk of court within 48 hours of execution. Holidays and weekends do not count in this time computation.

Resisting or Obstructing an Officer - 946.41

It is a class A misdemeanor for anyone to resist or obstruct an officer while such officer is doing any act in an official capacity and with lawful authority.

The definition of obstruction includes giving false information to the officer or knowingly placing physical evidence with the intent to mislead the officer in the performance of his/her duties including the service of any summons or civil process.

In addition, whoever, in violating the resisting or obstructing statute, hinders, delays, or prevents an officer from properly serving or executing any summons or civil process, is civilly liable to the person injured for any actual loss caused thereby and to the officer or the officer's superior for any damages adjudged against either of them.

Transfer of Encumbered Property - 943.84

The intentional transfer, conveyance, removal or sale of any property, real or personal, which is subject to an encumbrance or security interest is prohibited, pursuant to s. 943.84.

Theft by Fraud - 943.20(1)(d)

Obtains title to property of another person by intentionally deceiving the person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme.

Fees of Sheriffs – 814.70

The Sheriff shall collect the fees under this section. The fees are set as follows, **unless a higher fee is established under 814.705.**

814.705 Governing body may establish higher fees.

- (1) With respect to fees enumerated in s. 814.70 (1), (2), (3) (a) and (b), (4) (a) and (b), and (8):
 - (a) A county board may establish a higher fee for collection by the sheriff.
- (2) With respect to sheriff's fees for the sale of real estate under s. 814.70 (9), the county board may establish a higher fee in an amount not to exceed \$150.
- (3) With respect to sheriff's fees for the seizure of property or evictions under s. 814.70 (8), the county board may establish a higher fee in an amount not to exceed the actual costs incurred in performing the seizure or eviction.

KEY POINTS

- ★ **It is the crime of obstruction to knowingly give false information to mislead an officer in the performance of his/her service of process duties.**

GLOSSARY OF KEY TERMS

Attachment: A writ against property, which commands the sheriff to seize property belonging to the defendant to satisfy a claim of the plaintiff.

Competent: A person who is capable of understanding the contents of the paper served.

Eviction: A summons to the defendant to appear and answer a complaint for unlawfully detaining certain premises.

Execution: A writ to enforce a judgement, which requires the payment of money or the delivery of property.

Family Member: In the service of process context, a family member is a relative who is part of the household. * Check with department policy on this issue, as it is likely it will describe how the department interprets “family member.”

Garnishment: An action whereby a creditor attempts to satisfy his/her claim by seizing assets that belong to the debtor but are in the hands of a third party.

Garnishee Defendant: The party in a garnishment action who is holding the assets due to the debtor.

Haebes Corpus: A writ directed to a person detaining another, commanding him to produce the body of the prisoner at a certain time and place.

Large Claims Action: An action on a claim for greater than \$5,000.

Personal Service: The direct serving of a copy of the paper to the person to be served.

Posting: A process where a copy of an eviction action is affixed onto some part of the premises where it can be conveniently read.

Principal Defendant: The debtor in a garnishment action.

Reasonable Diligence: A pursuit of leads or information reasonably calculated to make personal service possible.

Replevin: A process commanding the sheriff to seize property, which is in the hands of the defendant.

Restraining Order: An order after a hearing that is intended to protect one individual from violence, abuse, harassment, stalking etc., by another.

Small Claims Action: An action on a claim for \$5,000 or less.

Substituted Service: The serving of a copy of the paper at the party’s usual place of abode to a competent member of the family at least fourteen years of age or to a competent adult currently residing in the abode.

Terminating Tenancy: A writ notifying the tenant to vacate the premises at a specified time.

Usual Place of Abode: The actual premises where the party sleeps, eats and gets mail, etc.

Writ of Restitution: An action, which commands the sheriff to remove the defendant and goods from the premises so that the owner may have peaceful possession of the same and to satisfy the judgement for costs.

TIME REQUIREMENTS FOR KEY ACTIONS

Below are the time limits based on applicable statutes.		
Paper	Statute	Timing
Eviction Summons	799.05(3)(b) 799.16(3)	Return date shall be not less than five working days nor more than thirty days from the issue date. The paper must be served not less than five working days prior to the return date. **If unable to serve as above, after due diligence. The paper can be posted on the premises at least seven days prior to the court date, with a copy mailed to the plaintiffs last known address at least five days prior to the court date. This may require you to obtain a new court date.
Notice of Mortgage Foreclosure	815.31	Sale shall be advertised by posting at least three weeks prior to the date of sale.
Notice of Sale of Personal Property	815.29	Sale shall be advertised by posting at least 20 days before the date of sale.
Garnishment Summons	812.07 812.35(2)(3)(4)	A garnishment summons and complaint shall be served on the "Garnishee defendant" in conformity with the standard procedure for a small claims action or a large claims action-whichever is applicable. Notice of such service or a copy of the garnishee summons and complaint, together with the summons in the principal action, shall be served on the "principal defendant: no later than ten business days after service on the "garnishee defendant."
Large Claims Action	801.02(1) 801.11(1)	Paper must be served within ninety days of filing with the clerk of courts.
Replevin Summons	799.05 801.02	Replevin as a small claims action – The paper must be served eight business days before the return date. The return date for the summons served must be not less than eight business days from the issue date nor more than thirty days from the issue date. Replevin in a large claims action – Paper must be served within ninety days of filing.
Restraining Orders Injunctions	813.12	Unless otherwise specified they can be served right up to the time of the hearing. Note: If the restraining order states 48 hours (or 24, 72...etc), check with your courts to see if holidays and weekends are excluded from the time limit.
Small Claims Action	799.05(3)	General – a small claims action must be served at least eight working days before the date the party must appear. The date of appearance shall be not less than eight working days from the issue date and no more than thirty days from the issue date. Small Claims – Eviction...see Evictions above.
Writs of Assistance	815.62 815.11	Writ may be obtained anytime after the Confirmation of Sale hearing and is valid for 60 days after issuance. NOTE: 846.35(3) Execution of writ of assistance or restitution. No writ of assistance or writ of restitution for the removal of a tenant whose tenancy is terminated as a result of a foreclosure judgment and sale may be executed before the end of the 2nd month beginning after the month in which the sale of the property is confirmed, unless the tenant has waived in writing the right under <u>sub. (2) (a) 1.</u> to retain possession of the rental unit.
Writ of Restitution	799.45	No writ shall be executed if received by the Sheriff more than thirty days after issuance by the courts. The Sheriff must execute the Writ and return it to the court within 10 days. NOTE: 846.35(3) Execution of writ of assistance or restitution. No writ of assistance or writ of restitution for the removal of a tenant whose tenancy is terminated as a result of a foreclosure judgment and sale may be executed before the end of the 2nd month beginning after the month in which the sale of the property is confirmed, unless the tenant has waived in writing the right under <u>sub. (2) (a) 1.</u> to retain possession of the rental unit.

Subpoena	885.03 885.06	Unless otherwise specified, they may be served up to the time of the hearing.
Order to Appear before Court Commissioner		Unless otherwise specified, this must be served forty eight hours prior to the hearing.
Motion and Order for Hearing on Contempt		Must be served eight working days prior to the court date.
Writ of Attachment	811	811.08 Officer's return. The officer executing the writ shall return thereon all of the officer's proceedings and within 10 days from receipt of the bond shall file the writ, affidavit and bond with the clerk of the court.
Terminating Tenancy, 5, 14 or 28 day notices	704.21	No time limit, only a notice.
Action in Enforce Judgment of Child Support	767.813(3)	Serve within time limits listed on the documents.
Notice of Appointment of Guardian	54.38(2) 55.09	Must be served ten days prior to hearing
Notices - Probate related	Chapter 859, 865, 879	Check the actual paper as most of them will have specific time limits on them based on personal service or mailing.
Search Warrant (Criminal)	968.15(1) 968.17	Must be executed within five days of the date of issue, this includes holidays and weekends. The search warrant must be returned to the clerk of courts within 48 hours of execution. 48 hours does not include holidays and weekends.
Search Warrant (Civil)	810.09	No specific time limit within the statutes and no requirement for a return to the clerk of court for Civil search warrants. These should be served within a reasonable time after issuance pursuant to the replevin or execution against property.
Criminal Complaint and Summons	968.04(4) 968.05(2)	Service on persons shall be made pursuant to the actual summons issued by the District Attorney or Courts. Service in a Corporations or LLC shall be made not less than 10 business days prior to the court date.
Order to Show Cause	Chapter 767 & 801.15(4)	Personal service no less than 5 working days prior to court date.
Summons and Petition (Family)	Chapter 767 & 801.15(4)	Personal service no less than 5 working days prior to court date.
Order to Appear (Family)	Chapter 767	Personal service at least 24 hours prior to the time of hearing if the person is found in the county where the hearing is being held. Personal service at least 72 hours prior to the hearing if the person is found in Wisconsin but not in the county where the hearing is being held.
Notice of Motion (Family)	Chapter 767 & 801.15(4)	Personal service no less than 5 working days prior to court date.
Termination of Parental Rights	48.42(4)(a)	Personal Service no less than 7 working days prior to court date.
Summons – Divorce Proceeding	801.095	Personal Service with 20 days to provide a response to the courts.
Writ of Execution – Execution against property	Chapter 815	Valid for sixty days from date of issuance. The judgment is valid for 5 years (some are more) and the writ may be reissued as many times as necessary during the five years.