

New and Revised CIVIL PROCESS MANUAL

Wisconsin Department of Justice
Division of Law Enforcement Services
Training & Standards Bureau
17 W. Main Street
P.O. Box 7070
Madison, Wisconsin 53707-7070
(608) 266-8800



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In 2017, the Wisconsin Civil Process group has created an association with board members who assist in updating this manual and organizing the annual Civil Process Conference. Thanks to the cooperation of sheriffs and police chiefs throughout the state, many deputies, officers, and support staff have assisted in keeping this manual up to date. This version of the manual was updated by a committee consisting of:

Deputy Dean Pitt
Marathon County Sheriff's Office – Sheriff Scott Parks

Deputy Joe Fischer
Brown County Sheriff's Office-Sheriff John Gossage

Administrative Specialist.Renee Oakes
Marathon County Sheriff's Office – Sheriff Scott Parks

Deputy Joseph Geissman
Kenosha County Sheriff's Office – Sheriff David Beth

Deputy Jason Fabry
Fond du Lac County Sheriff's Office – Sheriff Ryan Waldschmidt

Lead Law Enforcement Records Specialist Claire Glisczynski
Portage County Sheriff's Office- Sheriff Mike Lukas

Administrative Specialist Cheri Anthes
Fond du Lac County Sheriff's Office- Sheriff Ryan Waldschmidt

The text was written by retired Assistant Attorney General Dave Perlman and updated by Assistant Attorney General Francis X. Sullivan of the Training and Standards Bureau of the Wisconsin Department of Justice. This manual may also be obtained at www.wiscpg.com.



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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 cannot 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 or county attorney on specific questions and issues.

Sheriffs 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.

OFFICER SAFETY CONCERNS

Serving papers may feel routine, but it is not. Many times, the sheriff is removing parties from their residence, taking children from parents, repossessing vehicles, or foreclosing on homes. These are significant events for the parties involved, and we need to keep this in mind when serving/executing papers.

1. Do your homework:
 - a. Are you reviewing the papers that you are going to attempt to serve? Do you put a “risk value” on those papers? For example, serving divorce papers can be riskier than serving a witness subpoena.
 - b. Do you do a background check on the person you are serving? This could include a wants/warrants check, as well as checks with your department and the local jurisdiction for prior contacts.
 - c. Do you need additional people to complete the service?
 - d. Are you familiar with the location of where the service will take place?
 - e. Do you have your papers organized before you approach the location?
 - f. Does the communications center know where you are going?
 - g. Is your needed equipment ready to be used? (weapon loaded, radio, cell phone)
 - h. Will you have two-way radio and cell phone coverage at the location?
2. Observations when approaching:
 - a. How visible/detectable are you when you are approaching?
 - b. Is this a house, apartment or business location?
 - c. Where is the main entrance?
 - d. Are there people outside or watching you?
 - e. Is the person you’re attempting to serve visible?
 - f. Are there areas an ambush could happen?
 - g. Do you have an escape route planned?
 - h. What can you use for cover/concealment?
 - i. What are the surface conditions of the road, driveway, yard? (Ice, snow, gravel, mud etc.)
 - j. What is the condition of the property? (Boarded up, broken windows etc)
 - k. Are there out-buildings?
 - l. Are there any loose animals?
3. Parking your vehicle:
 - a. Have you called your dispatch/office to let someone know where you are?
 - b. Are your process papers ready?
 - c. Do you leave your vehicle running or not?
 - d. Do you lock your vehicle?
 - e. Do you have a way to call for help easily, if needed?
4. Approaching on foot:

- a. Are you aware of your surroundings?
 - b. Can you be seen as you approach? Uniform vs. plain clothes
 - c. Where are the possible ambush locations?
 - d. Where is your cover?
 - e. Are you ready to react quickly if needed?
 - f. Are you “scanning” the area/buildings, watching doors and windows?
 - g. How exposed are you?
 - h. What can you hear?
 - i. Listen before you knock
 - j. Can people hear you, your portable radio?
 - k. Are you watching where you are walking?
5. Making/attempting contact:
- a. Are you standing off to the side of the doorway/windows when you knock, ring the doorbell, or otherwise announce your presence?
 - b. When you make contact, are you watching their hands and watching for other people?
 - c. Are you identifying who they are?
 - d. Are you identifying yourself verbally and by means of identifiers such as your badge, uniform, or sheriff’s jacket?
 - e. Are you properly serving the papers and pointing out the needed information?
 - f. DO NOT offer legal advice in reference to the process papers
 - g. If there is no contact, are you leaving a note or business card so they can contact you?
6. After making/attempting service:
- a. Do you have everything you need?
 - b. Are you observing your surroundings?
 - c. Do you walk around your vehicle before entering it?
 - d. Do you wait to fill out additional paperwork until you are out of sight of the service location?
7. Entry into buildings:
- a. If you are going to need to force entrance, what is your plan?
 - b. Do you need a ram?
 - c. Have you called a locksmith? If so, do you have a plan to keep the locksmith safe while picking the lock?
 - d. You should NEVER allow landlords, locksmiths, or other civilian personnel to enter the building until it is secure.
8. Equipment/Clothing:
- a. Are you using a clipboard to keep your materials neat and organized?
 - b. Do you have a two-way radio or cell phone or both with you?

- c. If you are in plainclothes, are you wearing your badge or other identifiable markers so they can be easily seen? Have you communicated with your back-up to tell them how you are dressed?
- d. If you are wearing a gun and a badge, are you also wearing a ballistic vest?
- e. Are you carrying less-lethal equipment such as a baton, O/C spray, or taser?

GENERAL INFORMATION

STATUTORY BASIS

The sheriff's office is statutorily required to serve civil process.¹ Wis. Stat. § 59.27(4) Since the service of process is a statutory duty of the sheriff, it follows that this duty must be executed in a professional manner consistent with state law and department policy.

ROUTINE DUTIES UPON RECEIPT OF PAPERS TO BE SERVED

When you receive papers to be served, do the following:

- Examine the paper and copies to make sure they are valid. Check the appropriate section of this manual and the relevant statute to determine what constitutes validity for the paper you have.
- Check to see that the paper has any required signatures and court seals.
- Make sure that copies are consistent with the original documents.
- File stamp the documents with the date and time received. While this is not required for all documents, it's good practice.
- Check to see that the address for service is within your jurisdiction.
- Note the type of paper and specific requirements for service, including deadlines.
- Note the amount of time for service and check the dates. Keeping in mind legal holidays, do you have enough time to properly serve the paper?
- Determine who is to be served and how service can be completed.
- Collect fees or explain the Sheriff's fees.
- If applicable, ask party requesting service to complete the "Aid in Serving" form.

PRIORITY IN SERVING PROCESS

You will receive many different types of papers to serve. It is important to attach priorities to them, so you should keep the following in mind:

- **Level of threat.** An important priority is the potential threat to a person or property if timely service is not made. Examples include temporary restraining orders and injunctions related to domestic abuse, child abuse, individuals at risk, or harassment.

¹**Sheriff; duties.** The sheriff of a county shall do all of the following:

(4) 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.

Wis. Stat. § 59.27

- **Time limitations.** Take special note of papers having short dates and serve those first. Sometimes a paper arrives with a short deadline. Try to serve this paper on time, even if you feel that the party requesting service delayed getting the paper to you.

The party requesting service may want you to serve the papers at a specific place or time. While you should try to comply with reasonable requests, you should not compromise on officer safety requirements, your departmental policies, and statutory requirements.

FEES

Sheriffs are statutorily required to collect fees for service of most papers.² The statutory fee schedule appears in Appendix A, although county and municipal governments can set higher fees for some activities.³ You should always check your local fee schedule to make sure the correct fee is charged.

WHO MAY SERVE

This section discusses who may serve specific types of papers.

For most civil actions, any adult resident of the state (and some non-residents) who is not a party to the action can serve a summons anywhere in the state.⁴ Often it may still be best for a law enforcement officer within your own jurisdiction to serve civil process. If anything goes wrong during the service, you can respond to the problem as a law

² See Wis. Stat. § 814.70.

³ 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.

(b) A city council may establish a higher fee for collection by the city constable and city police.

(c) A village board may establish a higher fee for collection by the village marshal and village constable.

(d) A town board may establish a higher fee for collection by the town constable or town police.

(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.

Wis. Stat. § 814.705

⁴ Summons, by whom served.

(1) Who may serve. An authenticated copy of the summons may be served by any adult resident of the state where service is made who is not a party to the action. Service shall be made with reasonable diligence.

(1m) Service by certain nonresidents. Notwithstanding sub. (1), an adult who is not a party to the action and who resides in Illinois, Iowa, Michigan, or Minnesota may serve an authenticated copy of the summons in this state.

Wis. Stat. § 801.10.

enforcement officer. The exception being a request for mutual aid by the agency having jurisdiction.

An arrest warrant or summons on criminal complaints usually can only be served by a law enforcement officer within his or her jurisdiction.⁵ However, the mutual aid statute allows a law enforcement officer to serve a criminal or civil paper outside his or her jurisdiction if doing so upon request from a law enforcement agency in the host jurisdiction.⁶

Some other types of papers may only be served by law enforcement officers or by the sheriff:

- Criminal Arrest warrants and summons. (Law Enforcement)
- Criminal Search Warrant (Law Enforcement)
- Civil Process Search Warrants (Sheriff)
- Writ of Replevin (Sheriff)
- Writ of Restitution (Sheriff)
- Writ of Assistance (Sheriff)
- Writ of Attachment (Sheriff)
- Executions against Property (Sheriff)
- TRO/Injunctions/Surrender of Firearms (Sheriff)

⁵ Service.

(a) The warrant shall be directed to all law enforcement officers of the state. A warrant may be served anywhere in the state.

(b) A warrant is served by arresting the defendant and informing the defendant as soon as practicable of the nature of the crime with which the defendant is charged.

(c) An arrest may be made by a law enforcement officer without a warrant in the law enforcement officer's possession when the law enforcement officer has knowledge that a warrant has been issued. In such case, the officer shall inform the defendant as soon as practicable of the nature of the crime with which the defendant is charged.

(d) The law enforcement officer arresting a defendant shall endorse upon the warrant the time and place of the arrest and the law enforcement officer's fees and mileage therefor.

Wis. Stat. § 968.04(4)

⁶ Law enforcement; mutual assistance.

(1) In this section:

(a) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b) and includes a tribal law enforcement agency.

(b) "Tribal law enforcement agency" has the meaning given in s. 165.83 (1) (e).

(2) Except as provided in sub. (4), upon the request of any law enforcement agency, including county law enforcement agencies as provided in s. 59.28 (2), the law enforcement personnel of any other law enforcement agency may assist the requesting agency within the latter's jurisdiction, notwithstanding any other jurisdictional provision. For purposes of ss. 895.35 and 895.46, law enforcement personnel, while acting in response to a request for assistance, shall be deemed employees of the requesting agency and, to the extent that those sections apply to law enforcement personnel and a law enforcement agency acting under or affected by this section, ss. 895.35 and 895.46 shall apply to tribal law enforcement personnel and a tribal law enforcement agency acting under or affected by this section.

Wis. Stat. § 66.0313

- Chapter 51/55 Papers (Sheriff)
- Sheriff Sales (Sheriff)
- Emergency Detentions (Law Enforcement)

DO NOT GIVE LEGAL ADVICE

When you serve process, you will be in constant contact with citizens who are in stressful situations. It is not uncommon for a citizen to ask you for advice about the merits of their case or a referral for an attorney.

Do not give legal advice.⁷ Do not comment on the merits of a case. Do not refer them to a particular attorney.

You may refer citizens to other resources. Depending on the type of process you are serving, you may consider giving them information about landlord/tenant resources, shelters, or other resources available in your community. You also may refer them to CCAP, the clerk of courts, or this manual.

BANKRUPTCY

A bankruptcy filing may affect some aspects of civil process. A defendant may tell you they have filed for bankruptcy at any point during a civil action that involves one of the following:

- Writ of restitution
- Writ of assistance
- Writ of replevin
- Writ of attachment
- Execution against property
- Sheriff sale of real or personal property

First, you should determine whether the defendant has actually filed for bankruptcy or is “going to get an attorney.” If the defendant says he or she has filed for bankruptcy, find out the name of their attorney, the court where the bankruptcy is filed, and the case number. You may want to contact the attorney or bankruptcy court to determine whether the action has actually been filed.

⁷ **Not to act as attorney.** 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

If the bankruptcy has been filed and the court has not issued a release of the automatic stay, the writ is returned to the court unsatisfied. When the bankruptcy court resolves the issue, you may receive another writ.

BANKRUPTCY ACTIONS DO NOT AFFECT TEMPORARY RESTRAINING ORDERS, INJUNCTIONS, OR SURRENDER OF FIREARMS.

KEY POINTS

- **Prioritize and validate the papers**
- **Serve the papers relating to potential threats to persons or property and papers with short dates first.**
- **Do not give legal advice, but that does not mean you can't provide resources.**
- **Certain papers can only be served by the Sheriff.**

COMPUTING TIME

Many aspects of civil process have statutory time requirements. This section discusses how you compute time requirements. The chart in Appendix B lays out the timing requirements for many aspects of civil process.

In almost all cases, you will compute time using the statutory method outlined in Wis. Stat. § 801.15(1).⁸ Most papers you serve arise from proceedings under statutes between chapters 801 to 847. These include large-claim civil actions, writs of replevin, writs of attachment, garnishment, injunctions and restraining orders, and writs of executions to real and personal property. Many actions filed outside the scope of chapters 801-847 still use the same method of computing time. They include small claims actions under Wis. Stat. § 799.01(1)(d), eviction actions under Wis. Stat. § 799.40, and writs of restitution under Wis. Stat. § 799.45.⁹

GENERAL PRINCIPLES

When computing time, you do not count the first day. You do count the last day.¹⁰ If the last day is a Sunday or a legal holiday, the deadline extends to the next day.¹¹

⁸ **Time.**

(1)

(a) In this subsection, “holiday” means any day that is a holiday provided in s. 230.35 (4) (a) or a statewide legal holiday provided in s. 995.20 or both, and a full day on Good Friday.

(b) Notwithstanding ss. 985.09 and 990.001 (4), in computing any period of time prescribed or allowed by chs. 801 to 847, by any other statute governing actions and special proceedings, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day the clerk of courts office is closed. When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation.

Wis. Stat. § 801.15

⁹ Relation of this chapter to other procedural rules.

(1) General. Except as otherwise provided in this chapter, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 shall apply to actions and proceedings under this chapter. Any judicial proceeding authorized to be conducted under s. 807.13 may be so conducted in actions under this chapter.

Wis. Stat. § 799.04

¹⁰ The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last; and when any such time is expressed in hours the whole of Sunday and of any legal holiday, from midnight to midnight, shall be excluded.

Wis. Stat. § 990.001(4)(a)

¹¹ If the last day within which an act is to be done or proceeding had or taken falls on a Sunday or legal holiday the act may be done or the proceeding had or taken on the next secular day.

Wis. Stat. § 990.001(4)(b)

“Holidays” are defined in statute¹² as statewide legal holidays¹³ and the dates that Wisconsin state government offices are closed.¹⁴ The full list of holidays is:

- New Year’s Day (January 1)
- Martin Luther King, Jr., Day (third Monday in January)
- Presidents Day (third Monday in February)
- Good Friday (the Friday before Easter)
- Memorial Day (last Monday in May)
- Juneteenth (June 19)
- July 4
- Partisan primary election (second Tuesday in August in even-numbered years)
- Labor Day (first Monday in September)
- Columbus Day (second Monday in October)
- Fall general election (first Tuesday of November in even-numbered years)

¹² In this subsection, “holiday” means any day that is a holiday provided in s. 230.35 (4) (a) or a statewide legal holiday provided in s. 995.20 or both, and a full day on Good Friday.

Wis. Stat. § 801.15(1)(a)

¹³ **Legal holidays.** January 1, the 3rd Monday in January (which shall be the day of celebration for January 15), the 3rd Monday in February (which shall be the day of celebration for February 12 and 22), the last Monday in May (which shall be the day of celebration for May 30), June 19, which shall be the day of observation for Juneteenth Day, July 4, the 1st Monday in September which shall be known as Labor day, the 2nd Monday in October, November 11, the 4th Thursday in November (which shall be the day of celebration for Thanksgiving), December 25, the day of holding the partisan primary election, and the day of holding the general election in November are legal holidays. On Good Friday the period from 11 a.m. to 3 p.m. shall uniformly be observed for the purpose of worship. In every 1st class city the day of holding any municipal election is a legal holiday, and in every such city the afternoon of each day upon which a primary election is held for the nomination of candidates for city offices is a half holiday and in counties having a population of 750,000 or more the county board may by ordinance provide that all county employees shall have a half holiday on the day of such primary election and a holiday on the day of such municipal election, and that employees whose duties require that they work on such days be given equivalent time off on other days. Whenever any legal holiday falls on Sunday, the succeeding Monday shall be the legal holiday.

Wis. Stat. § 995.20

¹⁴ [T]he office of the agencies of state government shall be kept open on all days of the year except Saturdays, Sundays and the following holidays:

1. January 1.
- 1m. The 3rd Monday in January, which shall be the day of celebration for January 15.
3. The last Monday in May, which shall be the day of celebration for May 30.
4. July 4.
5. The first Monday in September.
6. The 4th Thursday in November.
7. December 24.
8. December 25.
9. December 31.
10. The day following if January 1, July 4 or December 25 falls on Sunday.

Wis. Stat. § 230.35(4)(a)

- Veterans Day (November 11)
- Thanksgiving (fourth Thursday in November)
- Christmas Eve Day (December 24)
- Christmas Day (December 25)
- New Years Eve Day (December 31)

If a holiday falls on a Sunday, the following Monday is considered the holiday. If your clerk of courts is closed on a weekday that is not one of the holidays listed above, you still count the day in your time computation unless it's the last day.

The next two sections explain how weekends and holidays factor into the computation of time.

TIME PERIOD OF 10 DAYS OR FEWER

If the time period is 10 days or fewer, only count working days. Do not count Saturdays, Sundays, or holidays. If your clerk of courts is closed on a weekday that is not one of the listed holidays, you still count the day in your time computation unless it's the last day.

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

TIME PERIOD OF MORE THAN 10 DAYS

If the time period is more than 10 days, count all days. If the last day is a Saturday, Sunday, holiday, or weekday that your clerk of courts is closed, the final day is the next working day.

Examples: (Assume no holidays)

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

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.

ENDORSEMENT

At the time you serve a summons, you must endorse it.¹⁵ This means you must sign it and indicate the time, date, place, and manner of service. If the server is a sheriff or deputy sheriff, the server's official title should be stated. When serving a corporation or business, you should indicate the name and title of the person served. The service is still valid if you do not endorse the summons, but no fee can be collected for the service.

METHODS OF SERVICE

PERSONAL SERVICE

Personal service is the most common form of service. When you serve somebody personally, you should identify yourself to the party being served and inform them of the contents of the paper. Do not engage in a discussion of the merits of the matter.

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 tell them they have been served. Be sure to document this on your certificate of service.

You are required to exercise reasonable diligence in effecting personal service. The statutes do not define "reasonable diligence." Caselaw has defined the term to mean a pursuit of leads or information reasonably calculated to make personal service possible.¹⁶ Consult and follow your department's policy related to the number of attempts you must make and how you should make them. At a minimum, you should attempt service on different days and at different times.

¹⁵ **Endorsement.** At the time of service, the person who serves a copy of the summons shall sign the summons and shall indicate thereon the time and date, place and manner of service and upon whom service was made. If the server is a sheriff or deputy sheriff, the server's official title shall be stated. Failure to make the endorsement shall not invalidate a service but the server shall not collect fees for the service.

Wis. Stat. § 801.10(2)

¹⁶See, e.g., *Loppnow v. Bielik*, 2010 WI App 66, 324 Wis. 2d 803, 783 N.W.2d 450 (holding reasonable diligence requires the plaintiff to "not stop short of pursuing a viable lead).

On the third attempt, if personal service cannot be made, most papers can be served by substitute service.¹⁷ You do not need to come back a fourth time unless your departmental policy requires it.

SUBSTITUTE SERVICE

You may serve a substitute if you are not able to serve someone personally with the exercise of reasonable diligence.¹⁸ You may leave a copy of the papers at the defendant's usual place of abode as long as you leave a copy with either:

- A competent member of the family who is at least 14 years old, or
- A competent adult currently residing at the defendant's abode.

In either case, you must inform the person you're serving of the contents of the paper without discussing the merits of the matter.

The definitions of these terms are important. A person's "usual place of abode" is where they eat, sleep, and get mail. A "competent" person is one who is capable of understanding the contents of the paper. The statutes do not define a "member of the family," but caselaw suggests that a person must be part of the household to qualify. For example, a Wisconsin case held that a daughter was not a "member of the family" because she lived in a different household.

Your departmental policies likely will offer additional clarification on substitute service.

¹⁷ If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

Wis. Stat. § 801.10(1)(b)

¹⁸ If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons;

Wis. Stat. § 801.11(1)(b)

SERVICE BY PUBLICATION

If you return a paper as unserved, the plaintiff may seek to effect service by publication.¹⁹ You have no role in this process, but it's included in this Manual so you understand the general framework.

Service by publication is allowed only if the defendant, after exercise of reasonable diligence, cannot be served by personal or substitute service. Service by publication has two parts. First, the summons must be published as a class 3 notice pursuant to Wis. Stat. ch. 985. Second, the summons and complaint must be mailed to the defendant if an address can be ascertained with reasonable diligence. A document served by publication is deemed served the first day it is published.²⁰

SERVICE ON PARTICULAR TYPES OF PEOPLE AND ENTITIES

There are statutory rules for how to serve certain type of people and entities. This section will explain the major ones. Remember to consult your department's policy for additional guidance.

NATURAL PERSON UNDER A DISABILITY

People may be considered "under a disability" because of age or incompetence. There are specific statutory requirements for serving them.²¹

¹⁹ If with reasonable diligence the defendant cannot be served under par. (a) or (b), 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 shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

Wis. Stat. § 801.11(1)(c).

²⁰ A summons served by publication is deemed served on the first day of required publication.

Wis. Stat. § 801.13(2)

²¹ Natural person under disability. Upon a natural person under disability by serving the summons in any manner prescribed in sub. (1) upon the person under disability and, in addition, where required by par. (a) or (b), upon a person therein designated. A minor 14 years of age or older who is not adjudicated incompetent and not otherwise under guardianship is not a person under disability for purposes of this subsection.

(a) Where the person under disability is a minor under the age of 14 years, summons shall be served separately in any manner prescribed in sub. (1) upon a parent or guardian having custody of the child, or if there is none, upon any other person having the 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 upon the child, then service of the summons shall also be made upon the guardian ad litem after appointment under s. 803.01.

(b) Where the person under disability is known by the plaintiff to be under guardianship of any kind, a summons shall be served separately upon the guardian in any manner prescribed in sub. (1), (5) or (6). If no guardian has been appointed when service is made upon a person alleged by the plaintiff to be incompetent to have charge of the person's affairs, then service of the summons shall be made upon the guardian ad litem after appointment under s. 803.01.

- **Minor younger than 14.** To serve a minor who younger than fourteen, you must do two things. First, you must personally serve the minor. Second, you must personally serve a parent or guardian who has custody of the minor. If there is no parent or guardian, then you must serve “any person having care and control of the child.” If there is no such person, then you must serve the guardian *ad litem* after the court appoints one.
- **Minor who is 14 or older.** Minors who are older than 14 are served in the same way as adults as long as they are not mentally incompetent and not otherwise under a guardianship. You are not required to notify a parent of service, but it’s a good practice to do so.
- **Person older than 14 who is under a guardianship or incompetent.** If a person 14 or older is known to be under a guardianship or known to be incompetent to be in charge of his or her own affairs, you must personally serve both the individual and the guardian. If the person is known to be incompetent to handle his or her own affairs but does not have a guardian, you must serve the individual and then serve guardian *ad litem* after the court appoints one.

ORGANIZATIONS

To serve most domestic or foreign corporations and limited liability companies, you must personally serve an officer, director, or managing agent.²² You also may leave a copy in the office of an officer, director, or managing agent with the person who is apparently in charge of the office. Your affidavit of service should always identify the name and title of the person served.

Wis. Stat. § 801.11(2)

²²Domestic or foreign corporations or limited liability companies, generally. Upon a domestic or foreign corporation or domestic or foreign limited liability company:

- (a) By personally serving the summons upon an officer, director or managing agent of the corporation or limited liability company either within or without this state. In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.
- (b) If with reasonable diligence the defendant cannot be served under par. (a), then the summons may be served upon an officer, director or managing agent of the corporation or limited liability company by publication and mailing as provided in sub. (1).
- (c) By serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.
- (d) If against any insurer, to any agent of the insurer as defined by s. 628.02. Service upon an agent of the insurer is not valid unless a copy of the summons and proof of service is sent by registered mail to the principal place of business of the insurer within 5 days after service upon the agent. Service upon any insurer may also be made under par. (a).

Wis. Stat. § 801.11(5)

Some small businesses are not incorporated. In that case, you likely will see a defendant's name accompanied by a notation that the person is doing business as a business name. (An example is: John Jones, d/b/a Jones Window Cleaning) If you receive such a paper, treat it as an action against the named defendant and serve him or her according to the rules that govern service on an individual.

PUBLIC ENTITIES

This section addresses how to serve various types of public entities. Be sure to distinguish between a public entity and a public employee. With the exception of sheriffs (discussed below) and people connected with the Wisconsin state correctional system (see the next section), you should follow the rules for serving an individual when you serve a public employee. For example, you would follow the rules in this section to serve a county or a Sheriff, but you would serve a deputy sheriff in the same way you would serve a private citizen.

- **State of Wisconsin.** To serve the State of Wisconsin, you must deliver papers to the Attorney General or leave them with an assistant or clerk in the Attorney General's office at the State Capitol.²³ Individual employees of a state prison are served according to the rules in the next section. All other state employees must be served individually.
- **County.** To serve the county, you must personally serve either the chair of the county board or the county clerk.²⁴ Individual county employees must be served individually.
- **Sheriff.** Any paper required to be delivered to or served on the sheriff may be served by leaving it at the sheriff's office during business hours.²⁵ Personal service on the sheriff can be effected by delivering the paper to any person "belonging to the sheriff's office." Individual employees of the sheriff's office – including deputies – must be served individually.
- **City.** To serve a city, you must personally serve the mayor, city manager, or city clerk.²⁶ Individual city employees – including police officers – must be served individually.

²³Wis. Stat. § 801.11(3).

²⁴ Wis. Stat. § 801.11(4)1

²⁵ Service on sheriff; how made. 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; but if there is any person belonging to such office therein, such writ, notice or other paper shall be delivered to such person; and every such service shall be considered equivalent to a personal delivery to or service on such sheriff.

Wis. Stat. §59.31

²⁶ Wis. Stat. § 801.11(4)3

- **Town.** To serve a town, you must personally serve the town board chair or the town clerk.²⁷ Individual town employees must be served individually.
- **Village.** To serve a village, you must personally serve the village president or clerk.²⁸ Individual village employees must be served individually.
- **Technical college district.** To serve a technical college district, you must personally serve the chair or secretary of the technical college district board.²⁹ Individual employees of the technical college district must be served individually.
- **School district or school board.** To serve a school district or school board, you must serve the president or clerk of the school board.³⁰ Individual employees of the school district must be served individually.
- **Any other body politic.** This catch-all addresses any other body politic that isn't listed above, such as a county civil service commission. To serve a body politic that isn't already identified above, you should serve an office, director, or managing agent.³¹ You also may leave the paper in the office of an officer, director or managing agent with a person who is apparently in charge of the office.

STATE PRISONS

Specific rules apply to service connected with specific state prisons.³² Wardens or superintendents of state prisons are required to appoint someone to serve process on prison officers, employees, and inmates. Wardens and superintendents themselves are served in the same way as any other resident of the state.

Keep in mind that this statute applies only to the state prisons listed in Wis. Stat. § 302.01. It does not apply to county jails. Inmates in county jails must be personally served unless their attorney notifies the court to serve the attorney instead under Wis. Stat. § 801.14(2).

²⁷ Wis. Stat. § 801.11(4)2

²⁸ Wis. Stat. § 801.11(4)4

²⁹ Wis. Stat. § 801.11(4)5

³⁰ Wis. Stat. § 801.11(4)6

³¹ Wis. Stat. § 801.11(4)7

³² Service of process on prison officers, employees, or inmates.

(1) Service of process may be made on the warden or superintendent of any prison named in s. 302.01 as upon any other resident of this state.

(2) Except as provided in sub. (1), service of process within any prison under s. 302.01 on any officer, employee, or inmate of the prison shall be made by the warden or superintendent or some person appointed by the warden or superintendent to serve process.

Wis. Stat. § 302.025

ATTORNEY OF RECORD

Once an action has started and an attorney of record has appeared, you should serve subsequent papers in the action on the attorney unless the court orders you otherwise.³³ If the attorney is not in his or her office, you can leave the papers with the person in charge of his or her office. You also can serve papers at the attorney's home in the same manner. If you cannot learn the attorney's office or home addresses, you can accomplish service by leaving the papers with the clerk of courts.

This section only applies to an attorney who is an attorney of record for somebody else. If the attorney is a party to the action, you must serve the attorney in the same way you would serve a private individual.

³³ Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party in person is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the last-known address, or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this section means: handing it to the attorney or to the party; transmitting a copy of the paper by facsimile machine to his or her office; or leaving it at his or her office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Except as otherwise provided in s. 801.18 (6) (a) and (b), if an attorney, or a party if appropriate, has consented in writing to accept service by electronic mail, delivery of a copy within this section may also include transmitting a copy of the paper by electronic mail to his or her primary or other designated electronic mail address. Service by mail is complete upon mailing. Service by facsimile is complete upon transmission. Service by electronic mail is complete upon transmission, except if the sender receives notification or indication that the message was not delivered. The first sentence of this subsection shall not apply to service of a summons or of any process of court or of any paper to bring a party into contempt of court.

SERVICE REQUIREMENTS FOR PARTICULAR ACTIONS

You will serve papers for various types of court action. This chapter looks at particular actions, each of which have their own service requirements.

RESTRAINING ORDERS AND INJUNCTIONS

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. The four types of restraining orders are:

- Domestic abuse restraining orders and injunctions under Wis. Stat. §§ 813.12 and 813.128;
- Harassment restraining orders and injunctions under Wis. Stat. § 813.125;
- Child abuse restraining orders and injunctions under Wis. Stat. § 813.122; and
- Individual at risk restraining orders and injunctions under Wis. Stat. § 813.123.

PETITION

Restraining orders and injunctions are commenced by petition, which must be personally served upon the respondent, pursuant to Wis. Stat. §§ 813.12(2), 813.125(2), 813.22(2), and 813.123(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.

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 officer serving the petition should review it carefully. It may contain essential information related to officer safety, as well as information necessary to serve the paper.

TEMPORARY RESTRAINING ORDER (TRO)

The court commissioner or judge may issue a temporary restraining order and notice of hearing. This restraining order has specific requirements, which may include 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.

When serving the restraining order on the respondent, notify them of the following:

- Court date, time and location
- Restrictions placed on them by this court order; and
- Failure to appear section.

If applicable, direct them to read and complete any surrender of firearms paperwork.

COURT-ORDERED RESTRICTIONS

Domestic Abuse TRO:

The respondent refrain from committing acts or threats of domestic abuse against the petitioner.

The respondent avoid the petitioner's residence and/or any location temporarily occupied by the petitioner. [The petitioner's residence is where they eat, sleep, and accept mail. "Location" typically refers to places like restaurants, shopping centers, and other residences.]

The respondent avoid contacting the petitioner and causing any person other than a party's attorney or law enforcement officer to contact the petitioner unless the petitioner consents in writing. Contact includes: contact at petitioner's home, work, school, public places, in person, by phone, in writing, by electronic communication or device, or in any other manner.

Absent a court order or "other notation" on the TRO, Law Enforcement may not bring the Respondent to the Petitioners residence to retrieve personal belongings.

The sheriff to assist in executing this temporary restraining order and/or petition and motion for injunction hearing, if requested.

The sheriff to accompany the petitioner and assist in placing the petitioner in physical possession of his/her residence, if requested.

Harassment TRO:

The action may be commenced without payment of filing fees because the petition alleges conduct that is the same as or similar to conduct that is prohibited under Wis. Stat. § 940.32; or is intentional infliction of physical pain, physical injury or illness; or is an intentional impairment of physical condition; or is a violation of Wis. Stat. § 940.225(1), (2) or (3), Wis. Stats.; or is a violation of §943.01, Wis. Stats., involving property that belongs to the individual; or is a threat to engage in the above-mentioned conduct.

The respondent cease or avoid the harassment of the petitioner.

The respondent avoid the petitioner's residence and/or any premises temporarily occupied by the petitioner. [Petitioner's residence is the place where they eat, sleep, accept mail. Premises refers to a building and the area of land it is on. This would typically mean an entire apartment complex, school, office building etc.]

The respondent avoid contact that harasses or intimidates the petitioner. Contact includes: contact at petitioner's home, work, school, public places, in person, by phone, in writing, by electronic communication or device, or in any other manner.

The respondent avoid contacting the petitioner and causing any person other than a party's attorney or law enforcement officer to contact the petitioner unless the petitioner consents in writing.

Absent a court order or "other notation" on the TRO, Law Enforcement may not bring the Respondent to the Petitioners residence to retrieve personal belongings

The sheriff to assist in executing this temporary restraining order and/or petition and motion for injunction hearing, if requested.

The sheriff to accompany the petitioner and assist in placing the petitioner in physical possession of his/her residence, if requested.

Child Abuse TRO:

The respondent avoid the child's residence and/or any premises temporarily occupied by the child. ["Child's residence" typically is defined as the location of the child's primary physical placement.]

The respondent avoid contacting the child and causing any person other than a party's attorney to contact the child, unless the child/petitioner consents in writing, and the court agrees the contact is in the best interests of the child. Contact includes: contact at child's home, work, school, public places, in person, by phone, in writing, by electronic communication or device, or in any other manner.

The sheriff to assist in executing this petition for temporary restraining order and/or petition and motion for injunction hearing, if requested.

Name: _____ is appointed guardian ad litem for the child. [This is informational only for us; no law enforcement action is necessary.]

If the respondent is the parent or legal guardian of the child or has court-ordered visitation with the child, the petitioner must complete the Uniform Child Custody Jurisdiction and Enforcement Act Affidavit (GF-150), which the clerk shall keep confidential and not disclose to the respondent.

Individual at Risk TRO:

The respondent avoid interference with an investigation of the individual at risk, the delivery of protective services to the individual at risk, or a protective placement of the individual at risk, or the delivery of services to the elder adult at risk.

The respondent cease engaging in or threatening to engage in physical abuse, emotional abuse, sexual abuse, treatment without consent, unreasonable confinement or restraint, financial exploitation, neglect, harassment, stalking of the individual at risk, or mistreatment of an animal.

The respondent avoid the residence of the individual at risk and/or any other location temporarily occupied by the individual at risk. [Residence is the place where they eat, sleep, accept mail. Location is typically things like nursing home, hospital, other residences, restaurants etc.]

The respondent avoid contacting the individual at risk and causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk. Contact includes: contact at individual at risk's home, work, school, public places, in person, by phone, in writing, by electronic communication or device, or in any other manner.

The respondent shall not intentionally prevent a representative or employee of the county protective services agency from meeting, communicating, or being in visual or audio contact with the adult at risk, except as ordered here: *(court may add specific information here)*

The sheriff to assist in executing this petition and/or temporary restraining order and/or petition and motion for injunction hearing, if requested.

If a person/agency filed this petition on behalf of the individual at risk, a guardian ad litem be appointed for the individual at risk. The court appoints [Guardian ad litem's name].

NOTE: Each restraining order has an “Other” field that can be completed by the court commissioner or circuit court judge.

NOTICE OF HEARING WITHOUT A TEMPORARY RESTRAINING ORDER

Sometimes a judge or court commissioner will issue a notice of hearing without a temporary restraining order. This is a notice for a court date and a notice regarding failure to appear. Although there are no restrictions on the respondent and no temporary order, it still must be served on the respondent. This notice is not entered into the TIME or VINE systems.

When serving a notice of hearing, notify the respondent of:

- The court date, time, and location
- The failure to appear section
- Any attached surrender of firearms paperwork

SERVICE ON RESPONDENT

For in-county service, the clerk will send the order to the sheriff for service on the respondent. Each order may provide for different actions by the serving party. Temporary Restraining orders for domestic abuse, harassment, child abuse and individuals at risk, may require the sheriff to assist in the removal of the respondent from a residence. Be sure to read the court order to ascertain whether or not the respondent is to be removed from the residence. Also check the information sheet to see if the petitioner has a different address than the respondent.

Temporary restraining orders/notices of hearings may be served pursuant to 801.11(a) or (b). This means they can be served by personally serving the respondent. If, after due diligence, (3 different days at different times) the paper may be served by substitute service. NOTE: Some courts do not permit substitute service.

TRO's can be served by a private process server. If the order requires action by the sheriff, the petitioner must make that request to the sheriff, even if the TRO was not served by the Sheriff.

TIMING OF SERVICE OF RESTRAINING ORDERS/NOTICE OF HEARINGS

Unless the petitioner requests service by a private process server, the clerk of court shall forward to the sheriff any TRO, injunction, or other document or notice that must be served on the respondent. If the sheriff uses a respondent information form (aid in serving), the clerk will transmit that as well.

A temporary restraining order needs to be served as soon as reasonably possible, due to the finding of “imminent danger” by the judge or court commissioner, the sheriff

needs to make a diligent effort to serve these papers. There should be a process in place for the receipt and handling of these papers received at night and on weekends.

If the order is a notice of hearing where a restraining order was not issued, the paper needs to be properly served. However the paper can be served pursuant to the court date time limits.

FEE FOR SERVICE OF RESTRAINING ORDERS

For harassment restraining order cases, it may be possible that the sheriff will charge a service fee under Wis. Stat. § 814.70(1) if the harassment petition does not allege conduct that is the same or similar to domestic violence. Generally, if the court charges a filing fee for harassment cases, then the sheriff's department will charge a service fee. In that situation, the new statute clarifies that the petitioner shall pay the fee directly to the sheriff. If you notice that the filing fee was not waived for a harassment petition, then you can direct the petitioner to the sheriff's department for service. However, even in this situation, you should still forward the order to the sheriff's department to be in compliance with the statute.

MULTIPLE TROS

In the case of multiple TRO's between the same individuals, the TRO that was ordered first is the one to be enforced. This can be determined by:

- If both are issued by the same county, the lowest court case number would be the first one issued and enforced.
- If issued by 2 different counties, the earlier date would be the first one issued and enforced. If they are on the same date, contact the courts to determine the time of issuance.

A TRO is a court order, signed by a judge or court commissioner and would take precedence over a 72 hour no contact prohibition.

NOTIFICATION REQUIREMENTS

Within one day after an order or injunction is issued, extended, modified, or vacated, the clerk of courts is required to send a copy to the sheriff and any other local law enforcement agency that is the central repository for orders and injunctions and has jurisdiction over the petitioner or victim's premises. See Wis. Stat. §§ 813.12(6)(b), 813.122(9)(b), 813.123(8)(b), 813.125(5g)(a).

Within 24 hours of receiving these orders, they must be entered into the Wisconsin TIME system. This includes the updates related to service, extension and dismissal.

Most counties are part of the Wisconsin Victim Information and Notification Everyday (VINE). VINE should be updated immediately to allow for the timely notification of victims.³⁴

CONFIDENTIALITY OF VICTIM'S ADDRESS.

The petition, temporary restraining order, notice of hearing and injunction paperwork may not disclose the address of the alleged victim. See Wis. Stat. §§ 813.12(5m) & 813.125(5m). 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.

OUT-OF-COUNTY SERVICE

Several questions have been raised about what to do when the respondent resides outside of the county where the TRO was granted. The statutes do not provide guidance for this situation. Clerks are simply instructed to forward "to the sheriff" any TRO, injunction, or other document, but the statutes do not specify whether it must be to the sheriff in the county where the TRO petition was filed, or to the sheriff in the county where the respondent resides.

The drafters of the new law did not intend to change current practice in regard to out-of-county service. Because the statutes are unclear, it is essential that clerks of court work with their sheriff's department to discuss what should be done in cases where the respondent resides outside of the county. Here are two options you can discuss:

1. The clerk will send the order to the sheriff of the county where the case was filed and that sheriff will work with the other county to effectuate service.
2. The clerk will send the order to the sheriff of the county where the respondent resides and that sheriff will serve the document. If you are going to use option

³⁴ **813.115 Service notification system.** A sheriff who executes or serves, or who assists a petitioner in executing or serving, a temporary restraining order, injunction, or other document or notice under s. 813.12, 813.122, 813.123, or 813.125 may use the Wisconsin Statewide Victim Notification service or another service notification system administered by the department of corrections that enables the petitioner to receive an automated notification of the service of the temporary restraining order, injunction, or other document or notice that must be served on the respondent. A sheriff for a county that uses the system shall enter each order for service into the system as soon as practicable so that the petitioner receives timely notification of the service. The clerk of court for a county that uses a service notification system shall, at the time a petition is filed under s. 813.12, 813.122, 813.123, or 813.125, make available to the petitioner information on how to gain access to the system.

two, please note that you'll need a fax number for the out-of-county sheriff. You'll also need to determine whether that county uses a respondent information form and get a copy for the petitioner to complete before the order can be sent.

Similar to out-of-county service, several questions have been raised regarding service of a respondent who lives outside of Wisconsin. Again, the statutes do not provide specific guidance for what to do in this situation. Consequently, it is important for clerks to discuss how out-of-state service should be handled with their sheriff's department. Here are a few options you can discuss:

1. The clerk will send the order to the sheriff of the county where the case was filed and that sheriff will assist the petitioner with serving the order.
2. The clerk will refer the petitioner to the local domestic violence advocacy agency and an advocate will assist the petitioner with serving the order.

Either the clerk or the sheriff can inform the petitioner of the option to hire a private process server. However, petitioners **should not** be told that they **must** hire a private process server to serve an out-of-state respondent. Requiring a petitioner to hire a private process server violates federal law.³⁵

SURRENDER OF FIREARMS

Each agency should have a policy in place to handle surrender of firearms procedures. Surrender of firearms applies to:

- ALL domestic abuse injunctions
- ALL child abuse injunctions
- Harassment injunctions when ordered
- Individuals at risk injunctions when ordered

A surrender of firearms order requires the surrender of firearms immediately to:

- Sheriff of the county where the action was ordered;
- Sheriff of the county where the respondent resides; or
- A third party approved by the court issuing the order.³⁶

³⁵ All states that receive VAWA funds, including Wisconsin, are subject to a federal law that prohibits victims from bearing the cost associated with the service of a protection order. (See 42 U.S.C. § 3796gg-5)

³⁶ Notice of restriction on firearm possession; surrender of firearms.

(a) An injunction issued under sub. (4) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29 and any similar applicable federal laws and penalties.
2. Except as provided in par. (ag), require in writing 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 under this section was

The person serving a petition for a temporary restraining order under Wis. Stat. § 813.12 must notify the respondent of the criminal penalties for possessing a firearm in violation of a restraining order. The person serving the petition also must explain Wis. Stat. § 813.1285, the procedures for surrendering a firearm, and the circumstances in which the respondent must appear at a hearing to surrender firearms. The respondent also must be provided with a firearm possession form and instructions for completing and returning it.³⁷

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 4 types of temporary restraining orders/injunctions. domestic abuse, child abuse, individuals at risk and harassment.
- Agencies should have a policy in place to deal with the surrender of firearms.
- For enforcement purposes, a court ordered TRO or Injunction would take precedence over a 72 hour no contact provision.
- Each restraining order has an “Other” field that can be completed by the court commissioner or circuit court judge

SMALL CLAIMS ACTIONS (NOT INCLUDING EVICTIONS)

Small claims actions are governed by Wis. Stat. ch. 799.³⁸ The most common types of small claims cases are:

commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner, in accordance with s. 813.1285.

(ag) If the respondent is a peace officer, an injunction issued under sub. (4) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

Wis. Stat. § 813.12(4m)

³⁷ When the respondent is served with the petition under this subsection, the person who serves the respondent shall also provide the respondent all of the following information:

1. Notice of the requirements and penalties under s. 941.29 and notice of any similar applicable federal laws and penalties.
2. An explanation of s. [813.1285](#), including the procedures for surrendering a firearm and the circumstances listed under s. [813.1285](#) under which a respondent must appear at a hearing to surrender firearms.
3. A firearm possession form developed under s. [813.1285 \(5\) \(a\)](#), with instructions for completing and returning the form.

Wis. Stat. § 813.12(2)(c).

³⁸ The Wisconsin court system publishes form SC-6000, the “Basic Guide to Wisconsin Small Claims Actions,” which is available at:

https://www.wicourts.gov/formdisplay/SC-6000V_instructions.pdf?formNumber=SC-6000V&formType=Instructions&formatId=2&language=en

- Civil actions for monetary damages, including tort and personal-injury actions where the amount claimed is \$5,000 or less, or other civil actions where the amount claimed is \$10,000 or less and the only remedies sought are money damages or garnishment of wages; and
- Eviction actions (discussed in the next section), regardless of the amount of rent claimed; and
- Replevin (return of property) actions, which include non-consumer credit actions for replevin if the property claimed is \$10,000 or less or consumer credit transactions for replevin if the amount financed is \$25,000 or less.

Other, less-common, types small claims actions include suits for the return of earnest money for the purchase of real property, action on an arbitration award for the purchase of real property, and eviction actions due to foreclosure.³⁹ Finally, a taxing authority may choose to use small claims procedure to recover a tax debt of \$10,000 or less.⁴⁰

³⁹ 799.01 Applicability of Chapter.

(1) Exclusive use of small claims procedure. Except as provided in ss. 799.02 (1) and 799.21 (4) and except as provided under sub. (2), the procedure in this chapter is the exclusive procedure to be used in circuit court in the following actions:

(a) Eviction actions. Actions for eviction as defined in s. 799.40 regardless of the amount of rent claimed therein.
(am) Return of earnest money. Actions for the return of earnest money tendered pursuant to a contract for purchase of real property, including a condominium unit, as defined in s. 703.02 (15), and time-share property, as defined in s. 707.02 (32), that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale, exchange or land contract unless the transfer is exempt from the real estate transfer fee under s. 77.25 regardless of the amount claimed.

(b) Forfeitures. Actions to recover forfeitures except as a different procedure is prescribed in chs. 23, 66, 345 and 778, or elsewhere, and such different procedures shall apply equally to the state, a county or a municipality regardless of any limitation contained therein.

(c) Replevins. Actions for replevin under ss. 810.01 to 810.13 where the value of the property claimed does not exceed \$10,000.

(cm) Arbitration. Actions for the confirmation, vacation, modification or correction of an arbitration award where arbitration was in settlement of a controversy arising out of a transaction for the purchase of real property, including a condominium unit, as defined in s. 703.02 (15), and time-share property, as defined in s. 707.02 (32), that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale, exchange or land contract regardless of the amount of that award.

(cr) Third-party complaints, personal injury claims, and tort claims. Third-party complaints, personal injury claims, and actions based in tort, where the amount claimed is \$5,000 or less.

(d) Other civil actions. Other civil actions where the amount claimed is \$10,000 or less, if the actions or proceedings are:

1. For money judgments only except for cognovit judgments which shall be taken pursuant to s. 806.25; or
2. For attachment under ch. 811 and garnishment under subch. I of ch. 812, except that s. 811.09 does not apply to proceedings under this chapter; or
3. To enforce a lien upon personalty.

⁴⁰ **Permissive use of small claims procedure.** A taxing authority may use the procedure in this chapter in an action to recover a tax from a person liable for that tax where the amount claimed, including interest and penalties, is \$10,000 or less. This chapter is not the exclusive procedure for those actions.

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

- Personal service in the standard way with the possibility for substitute service if after due diligence the party cannot be found. When serving the small claims summons, be sure to inform the party of the court date, time, and location, as well as the requirement to appear and/or provide a written response.
- 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.⁴¹

Except for small claims eviction actions (which will be discussed in the next section), small claims actions against Wisconsin residents must be served at least 8 working days before

⁴¹ 799.12 Service of summons.

(1) Except as otherwise provided in this chapter, all provisions of chs. 801 to 847 with respect to jurisdiction of the persons of defendants, the procedure of commencing civil actions, and the mode and manner of service of process, shall apply to actions and proceedings under this chapter.

(2) Any circuit court may by rule authorize the service of summons in some or all actions under this chapter by mail under sub. (3) in lieu of personal or substituted service under s. 801.11.

(3) If authorized by court rule under sub. (2), service may be made by mail by leaving the original and necessary copies of the summons with the clerk of court, together with the fee prescribed in s. 814.62 (4). The court shall require the use of certified mail with return receipt requested for all eviction cases for which service by mail is authorized under sub. (2), and for all other cases may by rule require the use of certified mail with return receipt requested. Whenever the use of certified mail is required, the additional fee prescribed in s. 814.62 (4) shall be paid for each defendant. The clerk shall mail a copy to each defendant at the last-known address as specified in the summons. Service of the summons is considered completed when it is mailed, unless the envelope enclosing the summons has been returned unopened to the clerk prior to the return date. All mailing of summonses shall be done in envelopes upon which the clerk's return address appears, with a request to return to that address. Service by mail to obtain a personal judgment shall be limited to the county where the action is commenced.

(4) If with reasonable diligence the defendant cannot be served by personal or substituted service under s. 801.11, or if mailed service is authorized under sub. (2) and the envelope enclosing the summons is returned unopened to the clerk, service may be made by mailing and publication under sub. (6). The clerk shall issue a new return date allowing timely publication of a class 1 notice under ch. 985.

(5) Section 345.09 shall not apply to actions under this chapter.

(6)

(a) Service by mailing and publication authorized under sub. (4) may be made as provided in s. 801.11 (1) (c) or as provided in this subsection.

(b) If the defendant's post-office address can be ascertained with reasonable diligence, service may be made by mailing to the defendant a copy of the summons at or immediately prior to the publication of the summons or a notice under par. (c) as a class 1 notice under ch. 985.

(c) If the defendant's post-office address cannot be ascertained with reasonable diligence, the mailing may be omitted and service may be made by publishing as a class 1 notice under ch. 985 a notice [form of notice omitted]

(7) Any circuit court may by rule authorize service of the summons and complaint prior to filing and authentication thereof, provided the appropriate fee under s. 814.62 is paid before the summons is issued and the summons is not reusable for a different defendant.

the date the party must appear. The date of appearance cannot be less than 8 working days or more than 30 calendar days from the issue date.⁴²

In measuring the time, the 8 days begins with the first working day after the issue date and does not count weekend days or holidays. In measuring the 30 days, holidays and weekends count in the computation, and the count begins with the first day after the issue date, even if it is not a working day. If the clerk of courts is closed on the thirtieth day, then

Examples: Assume no holidays

If small claims action is issued on 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.

the last day is the next day that the clerk of courts is open.

SMALL CLAIMS ACTIONS – EVICTIONS

Small claims evictions actions must be served personally on the defendant or, if the defendant cannot be found after the exercise of due diligence, through substituted service. If personal or substituted service cannot 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 in this section.⁴³

⁴²(3) Return date.

- (a) Every summons shall specify a return date and time.
- (b) Except in eviction actions, the return date for a summons served upon a resident of this state shall be not less than 8 days nor more than 30 days from the issue date, and service shall be made not less than 8 days prior to the return date. In eviction actions, the return date for a summons served upon a resident of this state shall be not less than 5 days nor more than 25 days from the issue date, and service shall be made not less than 5 days prior to the return date.
- (c) The return date for a summons served upon a nonresident of this state shall be not less than 20 days from the issue date.
- (d) The clerk shall set the day and hour at which the summons is returnable.

Wis. Stat. § 799.05(3)

⁴³ **Adjournment, posting and mailing in eviction actions.** In eviction actions, when the defendant has not been served with personal or substituted service pursuant to s. 799.12 (1) and does not waive the defense of lack of jurisdiction over the person under s. 802.06 (8), service may be made as follows:

- (a) If the summons is returned more than 7 days prior to the return date with proof that the defendant cannot be served with personal or substituted service within the state under s. 799.12 (1), the plaintiff

Some circuit courts have rules that authorize service of small claims evictions actions by mail. If the circuit court in the jurisdiction where the action is filed has such a rule, the original and necessary copies of the paper are left with the clerk of court for mailing, along with payment of the appropriate fees.

In eviction actions, the return date must be at least 5 working days but no more than 25 calendar days from the issue date. The paper must be served at least 5 working days before the return date.

Examples: Assume no holidays

If eviction action was issued on March 10th, the earliest the return date could be is 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 March 10th the latest the return date could be is April 4th. Service must be accomplished by March 28th.

If the paper is returned more than 7 days before 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. Usually the plaintiff or their attorney does this. It is important that you notify them of your inability to serve personally or by substitution early enough that they can meet the statutory time restrictions.

Posting is accomplished by affixing a copy of the paper onto some part of the premises where it can be conveniently read. The posting must occur at least 7 calendar days before the return date. If the plaintiff is attempting to serve by posting, an additional copy of the paper must be mailed to the defendant at their last known address at least 5

may, at least 7 days prior to the return date, affix a copy of the summons and complaint onto some part of the premises where it may be conveniently read. At least 5 days prior to the return date an additional copy of the summons and complaint shall also be mailed to the defendant at the last-known address, even if it is the premises which are the subject of the action.

(b) In all other cases where the summons and complaint are returned with proof that the defendant cannot be served with personal or substituted service within the state under s. 799.12 (1), the court shall, on the return date, adjourn the case to a day certain not less than 7 days from the return date, and the plaintiff shall affix a notice in substantial conformity with sub. (4) (c) onto some part of the premises where it may be conveniently read. At least 5 days prior to the return date, an additional copy of said notice, together with a copy of the summons and complaint, shall be mailed to the defendant at the last-known address, even if it is the premises which are the subject of the action.

(c) Before judgment is entered after service is made under this section, the plaintiff shall file proof of compliance with this section.

Wis. Stat. § 799.16(3)

calendar days before the return date. Mailing is required even if the last known address is the premises that are the subject of the action.

Example: Assume no holidays

Paper issued on March 10th with a return date of April 4th. 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 March 24th. The posting must occur no later than March 26th as that is seven working days prior to the return date. The mailing must occur no later than March 28th as that is 5 working days prior to the return date.

If the paper is returned less than 7 working days before 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 must adjourn to a date at least 7 days from the original return date, and service should be accomplished by posting and mailing.

Some courts permit the Sheriff to change the court date (after consulting with the Clerk of Courts office) to allow enough time to post and mail the eviction summons. Check with your office if you are not sure whether your county allows this.

TERMINATING TENANCY

A termination of tenancy⁴⁴ is a notice to a tenant that their tenancy is being terminated for various reasons. It is one of the few examples of civil process that can be served by a party to the action – in this case, the landlord. A termination of tenancy can be served by:

⁴⁴ Notice by landlord. Notice by the landlord or a person in the landlord's behalf must be given under this chapter by one of the following methods:

- (a) By giving a copy of the notice personally to the tenant or by 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;
- (b) 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;
- (c) If notice cannot be given under par. (a) or (b) with reasonable diligence, 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;
- (d) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last-known address;
- (e) By serving the tenant as prescribed in s. 801.11 for the service of a summons.

Wis. Stat. § 704.21(1)

- 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; or
- 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.

If, after the exercise of reasonable diligence, notice cannot be served in either of the ways above, then service can be made 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.

WRIT OF RESTITUTION

In an eviction action, if the court finds that the plaintiff is entitled to possession, the court shall immediately order a writ of restitution pursuant to Wis. Stat. § 799.45. 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 cannot be lawfully executed as it was received more than 30 days after its issuance.

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.⁴⁵

Example:

The sheriff receives a timely writ on 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.

⁴⁵ Return of writ; taxation of additional costs.

(a) 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.

Wis. Stat. § 799.45(5)

Court Ordered Stay of Writs of Restitution. There are three situations where the court can order a stay of a writ of restitution:

- Application for emergency assistance under Wis. Stat. § 799.40(4)(a)⁴⁶
- Hardship under Wis. Stat. § 799.44(3)⁴⁷
- Appeal of the judgment order if the defendant meets certain conditions under Wis. Stat. § 799.445⁴⁸

⁴⁶ Stay of proceeding.

(a) The court shall stay the proceedings in a civil action of eviction if the tenant applies for emergency assistance under s. 49.138, except that no stay may be granted under this paragraph after a writ of restitution has been issued in the proceedings. If a stay is granted, the tenant shall inform the court of the outcome of the determination of eligibility for emergency assistance. The stay remains in effect until the tenant's eligibility for emergency assistance is determined and, if the tenant is determined to be eligible, until the tenant receives the emergency assistance, except that the stay may not remain in effect for more than 10 working days, as defined in s. 227.01 (14).

Wis. Stat. § 799.40(4)

⁴⁷STAY OF WRIT OF RESTITUTION. At the time of ordering judgment, upon application of the defendant with notice to the plaintiff, the court may, in cases where it determines hardship to exist, stay the issuance of the writ by a period not to exceed 30 days from the date of the order for judgment. Any such stay shall be conditioned upon the defendant paying all rent or other charges due and unpaid at the entry of judgment and upon the defendant paying the reasonable value of the occupancy of the premises, including reasonable charges, during the period of the stay upon such terms and at such times as the court directs. The court may further require the defendant, as a condition of such stay, to give a bond in such amount and with such sureties as the court directs, conditioned upon the defendant's faithful performance of the conditions of the stay. Upon the failure of the defendant to perform any of the conditions of the stay, the plaintiff may file an affidavit executed by the plaintiff or attorney, stating the facts of such default, and the writ of restitution may forthwith be issued.

Wis. Stat. § 799.44(3)

⁴⁸**Appeal.** An appeal in an eviction action shall be initiated within 15 days of the entry of judgment or order as specified in s. [808.04 \(2\)](#). An order for judgment for restitution of the premises under s. [799.44 \(1\)](#) or for denial of restitution is appealable as a matter of right under s. [808.03 \(1\)](#) within 15 days after the entry of the order for judgment for restitution or for denial of restitution. An order for judgment for additional causes of action is appealable as a matter of right under s. [808.03 \(1\)](#) within 15 days after the entry of the order for judgment for the additional causes of action. No appeal by a defendant of an order for judgment for restitution of the premises may stay proceedings on the judgment unless the appellant serves and files with the notice of appeal an undertaking to the plaintiff, in an amount and with surety approved by the judge who ordered the entry of judgment. The undertaking shall provide that the appellant will pay all costs and disbursements of the appeal which may be taxed against the appellant, obey the order of the appellate court upon the appeal and pay all rent and other damages accruing to the plaintiff during the pendency of the appeal. Upon service and filing of this undertaking, all further proceedings in enforcement of the judgment appealed from are stayed pending the determination of the appeal. Upon service by the appellant of a copy of the notice and appeal and approved undertaking upon the sheriff holding an issued but unexecuted writ of restitution or of execution, the sheriff shall promptly cease all further proceedings pending the determination of the appeal. If the tenant fails to pay rent when due, or otherwise defaults in the terms of the undertaking, the payment guaranteed by the undertaking with surety shall be payable immediately to the plaintiff and shall not be held in escrow by the court. Upon the failure of the tenant to pay rent when due, or upon other default by the tenant in the terms of the undertaking, the stay of proceedings shall be dismissed and the sheriff shall immediately execute the writ of restitution.

Wis. Stat. § 799.445

Handling and Executing a Writ of Restitution- 799.45

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 was 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
- Have plaintiff complete the Aid in Serving Form.
- Check to see that the names and case number are completed
 - Only the defendant(s) or those claiming residency under the defendant(s) will be removed.
 - Example John and Jane Doe are listed on the lease. Writ is issued against Jane Doe. Only Jane Doe and those claiming under her will be removed. John cannot be forcibly removed. NOTE: It is a good idea to change locks and provide John with a new key.
 - Example Jane Doe is listed on the lease. Writ is issued against Jane Doe. John and Jane Doe live together at the residence. John Doe is claiming under Jane therefore both are removed by the writ.
- Ask the plaintiff how they wish to handle the property. See below.
- Collect any necessary fees based on your policy.

At the time the plaintiff brings the writ to the Sheriff, the plaintiff has three options for the handling of property:⁴⁹

1. Utilizing a bonded mover to handle the removal of personal property.
2. Plaintiff can move and store the property. The Plaintiff can request the sheriff to stand by during this process.
3. Plaintiff can notify the sheriff they will handle the removal and storage or disposal of the property.

⁴⁹ Execution of writ of restitution; disposal of personal property.

(1) When executed. Upon delivery of a writ of restitution to the sheriff, and after payment to the sheriff of the fee required by s. 814.70 (8), the sheriff shall execute the writ. If the plaintiff, or the plaintiff's attorney or agent, does not notify the sheriff under sub. (3m) that the plaintiff or his or her agent will remove and store or dispose of the property, the sheriff may require that prior to the execution of any writ of restitution the plaintiff deposit a reasonable sum representing the probable cost of removing the defendant's property chargeable to the plaintiff under s. 814.70 (8) and (10) and of the services of deputies under s. 814.70 (8). In case of dispute as to the amount of the required deposit, the amount of that deposit shall be determined by the court under s. 814.70 (10).

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. The notice or letter should contain: Removal Process
 - Date and Time to be out (optional)
 - Notation that the 10 days does not give the tenant 10 days to be removed, it gives the Sheriff 10 days to act on the writ and return it to the courts.
 - Notation about the disposition of personal property
- Serve the writ, noting the type of service and who was served.
- If no one is home, on the first attempt, post the writ on the door and document this on the service sheet.
- There is no requirement to serve the defendants, nor is there any requirement to actually give them any time to move out. The court order permits the Sheriff to remove the defendants immediately, without further notice. This may be an option if there are officer safety concerns.

Basic Steps in handling a Writ of Restitution

- Remove the defendant and all other persons found upon the premises claiming under the defendant, using such reasonable force as is necessary.
- Sheriff enters the premises, without the landlord, and secures the premises. Entry can be made by the least intrusive method, key, locksmith, or forced entry. In most cases it is a good practice announce yourself as a Sheriff's Deputy. Sheriff's deputies should have some type of visible ID to indicate they are law enforcement. To avoid conflict or safety concerns, the landlord should not be permitted to enter the premises until the defendants have been removed and the premises has been secured.
- It's a good practice to identify and document all parties present. Check for warrants. Remind them to take all medications, medical devices, cell phone, and cell phone chargers with them. Stay with the parties as they gather their items.
- Physically remove them from the address listed on the writ. Inform them any return to this address would be considered trespassing. It's a good practice when dealing with multi-unit buildings to remove them from the entire premises to the public sidewalk. Once the sheriff leaves the property, if the defendant(s) return to the property but not the specific unit, this may not be considered trespassing.

Example: Defendant removed from Evergreen Apartments, Apt # 102. Later the defendant returns to Evergreen Apartments, Apt # 300 (a friend). This would not be trespassing if they have permission from # 300 to be there. This will depend on the wording on the writ.

- It's a good practice take digital photos to document the property condition. This helps to alleviate any questions of value or condition in the future.

Options for Handling of Property

Bonded mover hired by plaintiff. Most movers are insured, not bonded, be sure the mover is bonded or has a bond of indemnity. The plaintiff must pay for the mover prior to the move or have made arrangements with the mover. The letter must be completed within 3 days and mailed to the last known address of the defendants advising the defendants of the process to retrieve their property. Property must be stored within the county unless there is documentation showing there are not places for storage within the county.

Sheriff handles the move and storage (off site). Bond of indemnity required/Bonded mover. Sheriff is responsible for the "ordinary care" in the removal and storage of the items. Letter must be completed within 3 days and mailed to the last known address of the defendants advising the defendants of the process to retrieve their property. Property must be stored within the county unless there is documentation showing there are not places for storage within the county.

Alternative disposition of property by plaintiff pursuant to Wis. Stat. § 799.45(3m). The plaintiff/his or her attorney or agent may notify the Sheriff that the plaintiff/plaintiffs agent will be responsible for removal/storage or disposal, upon delivery of the writ to the Sheriff. Plaintiff can request the Sheriff to supervise this process. We basically stand by to protect the plaintiff during this process The Plaintiff can remove and store or dispose of property at their discretion.

Return of Property:

Medications and medical devices must be returned to the defendant upon request, without the required payment of moving and storage fees. If the plaintiff/mover takes medications, they must hold medications for 7 days. The Sheriff should have a policy in place to deal with medications left at the residence. Many agencies will confiscate and inventory the medications for 30 days and then dispose of them through a drug drop to ensure proper disposal.

Illegal drugs/items: Illegal drugs and other contraband may be seized by the sheriff or local law enforcement and handled pursuant to your policies.

Firearms, ammunition, and gunpowder: It is a good practice to confiscate and inventory any firearms, ammunition and gunpowder. This helps to ensure the proper disposition of these items pursuant to law. If ammunition or gunpowder cannot be safely stored, it should be destroyed pursuant to your agency policy.

Special Considerations:

Elderly/Developmentally Disabled/Mentally Disabled: Prior to the actual eviction date you may wish to contact your county Health and Family Services, Senior Services, Department of Social Services, etc. to obtain assistance with the eviction of persons with disabilities and/or elderly persons.

Children: If necessary, contact your county Juvenile Services Division for assistance.

Pets, Exotic and Domestic: Utilize local resources, humane society, pet stores, animal shelters, to assist with the removal and care of exotic and domestic pets. Arrangements should be made prior to the moving date to accommodate these concerns. It should be noted that the abandonment of pets is a criminal act and the defendants can be charged with animal neglect in some cases.

Vehicles: Vehicles left on the premises may be handled by the plaintiff contacting the Wisconsin Department of Motor Vehicles to obtain the necessary paperwork to ascertain the owner information as well as the process for obtaining title to the vehicle. Also many local towing companies will assist with this process.

Chemicals: Chemicals located on the premises may require the utilization of the DNR, Hazmat teams or a chemical clean up company.

Return of writ and taxation of additional costs pursuant to Wis. Stat. § 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.

KEY POINTS

- **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 twenty five 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**
- **As of March 2014 if the landlord notifies the sheriff under 799.45(3m), the landlord may handle the removal, storing, or disposal of property that is found on the premises and does not belong to the plaintiff.**

LARGE CLAIMS: CLAIMS OVER \$10,000

Service of a civil action with claims greater than \$10,000 is governed by Wis. Stat. § 801.11. An authenticated copy of the paper must be served within 90 days of filing. If after due diligence the party cannot be found, then substituted service is to be employed. If with reasonable diligence the party cannot 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 cannot be found with reasonable diligence.

DIVORCE PETITION

An authenticated copy of the petition for divorce should be served in the standard way.⁵⁰ It should be personally served on the opposing party. If that is not possible after the exercise of reasonable diligence, it should be served by substituted service. If substituted service is not possible, it should be served by publication. If the parties together initiate the action with a joint petition, service is not required. Note: Some courts of jurisdiction may require personal service.

A copy of the petition also should be served upon the family court commissioner of the county in which the action is begun, even if the divorce is not contested.

ACTIONS TO ENFORCE JUDGMENT OF CHILD SUPPORT

In any action to enforce a judgment or order of child support,⁵¹ service can be accomplished by the following:

⁵⁰ Service. If only one party initiates the action, the other shall be served under ch. 801 and may serve a response or counterclaim within 20 days after the date of service, except that questions of jurisdiction may be raised at any time prior to judgment. Service shall be made upon the petitioner, and the original copy of the response shall be filed in court. If the parties together initiate the action with a joint petition, service of summons is not required.

Wis. Stat. § 767.215(3)

⁵¹ 767.70 Child support enforcement: notice and service of process.

(1) When satisfied. In an action under s. 767.001 (1) (i) to enforce or modify a judgment or order with respect to child support, due process requirements related to notice and service of process are satisfied if the court finds all of the following:

(a) That a diligent effort was made to ascertain the location of the respondent.

(b) That written notice of the action to the respondent has been delivered to the most recent residential address or employer address provided by the respondent under s. 767.58 (2) to the county child support agency under s. 59.53 (5).

(2) Rules on locating respondent. The department shall promulgate rules specifying the process that the department will use under sub. (1) (a) to ascertain the location of the respondent. Notwithstanding sub. (1) (b),

- Personal service on the respondent. If personal service cannot be made, the petitioner must show a diligent effort is made to ascertain the location of the respondent, and
- Written notice of the action has been delivered to the most recent residential address or employer address provided by the respondent to the county child support agency.

GARNISHMENT

In a garnishment action, a creditor attempts to satisfy their claims by seizing assets (including bank accounts) 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 is called the “garnishee defendant.”

In all garnishment proceedings except garnishment of earnings, the summons and complaint are served on the garnishee defendant in conformity with the standard procedure.⁵² Typically you also will serve a check for the required \$3.00 garnishment fee on the garnishee defendant. If the garnishee defendant is a partnership, service may be made upon any partner.⁵³

No later than 10 business days after service on the garnishee defendant, notice of such service or a copy of the garnishee summons and complaint, together with the summons in the principal action, must be served on the principal defendant in the standard way.

the process specified in the rules shall utilize all reasonable means to which the department has access, including electronic means, interfaces with other programs, and information provided by the postmaster, for determining the current address of the respondent.

⁵² Except as provided in s. 812.05 (4), the garnishee summons and complaint shall be served on the garnishee as required for the exercise of personal jurisdiction under ch. 801, and notice of such service in substantial conformity with sub. (4), or a copy of the garnishee summons and complaint, together with the summons in the principal action, shall be served on the principal defendant as required for the exercise of personal jurisdiction under ch. 801, not later than 10 days after service on the garnishee as provided in s. 801.11.

Wis. Stat. § 812.07(1)

⁵³ If a garnishee defendant is named by a partnership name, service of the garnishee summons and complaint may be made upon any partner. A judgment rendered under such circumstances is a binding adjudication individually against each partner so served and is a binding adjudication against the partnership as to its assets anywhere.

Wis. Stat. § 812.05(4)

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 , 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 March 24th.

Garnishments of earnings⁵⁴ are handled differently. The judgment creditor begins an earnings garnishment procedure by filing a garnishment notice with the clerk of courts. When the clerk of courts receives the notice and associated fee, it issues two earning garnishment forms. Those forms are served as follows:⁵⁵

- **Principal defendant.** Within 60 days after the garnishment notice was filed, one earning form is served on the debtor by first class mail, certified mail with return receipt requested, or any method permissible for serving a summons in a civil action except publication. At the same time the creditor serves the earnings form on the

⁵⁴“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.

Wis. Stat. § 812.30(7)

⁵⁵ (2) Upon receipt of the notice under sub. (1) and payment of the fee under s. 814.62 (1), the clerk of courts shall issue 2 earnings garnishment forms under s. 812.44 (3) for each garnishee. Blank earnings garnishment forms may be issued, but they shall carry the court seal. A circuit court may permit, by rule, the clerk to issue earnings garnishment forms after payment of the fee but before the filing of the notice under sub. (1). That circuit court rule shall require the notice to be filed with the court at a later time, but no later than 5 business days after the date the garnishee is served under sub. (3).

(3)

(a) Within 60 days after filing the notice under sub. (1) and as specified under sub. (4) (c), the creditor shall serve one of the 2 earnings garnishment forms upon the debtor by one of the following means:

1. First class mail.

2. Certified mail, return receipt requested.

3. Any means permissible for the service of a summons in a civil action, other than publication.

(b) Within 60 days after filing the notice under sub. (1), the creditor shall serve one of the 2 earnings garnishment forms upon the garnishee by one of the means listed under par. (a) 1. to 3., or by other means if the garnishee signs an admission of service.

(4)

(a) The creditor shall tender the garnishee fee under s. 812.33 (1) to the garnishee at the time that the earnings garnishment form is served.

(b) The creditor shall serve all of the following on the debtor at the time that the earnings garnishment form is served:

1. An exemption notice under s. 812.44 (4).

2. An answer form under s. 812.44 (5).

3. The schedules and worksheets adopted under s. 812.34 (3).

(c) 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.

Wis. Stat. § 812.35

principal defendant, the creditor also should serve an exemption notice, an answer form, and the required schedules and worksheets

- **Garnishee defendant.** Within 60 days after the garnishment notice was filed, the other earning form and the statutorily required garnishee fee must be served on the garnishee defendant in any of the ways permitted for service on the principal defendant, as well as by any other means if the garnishee defendant signs an admission of service.

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

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.⁵⁶

SHERIFF SALES

A sheriff's sale of real estate is governed by Wis. Stat. chs. 815 and 846. Usually, a sheriff sale follows a civil action. Once the court orders a sale, the sheriff will be contacted to set up a sale date. Once that date is set, the plaintiff or plaintiff's attorney will provide the sheriff with a notice of mortgage foreclosure or sheriff's sale.

This section breaks sale procedures down into four sections:

- Notice of sale procedures
- Sheriff's duties before the sale
- Sale procedures

⁵⁶ Witness' fees, prepayment.

(1) Except when subpoenaed on behalf of the state, of a municipality in a forfeiture action, or of an indigent respondent in a paternity proceeding, no person is required to attend as a witness in any civil action, matter or proceeding unless witness fees are paid or tendered, in cash or by check, share draft or other draft, to the person for one day's attendance and for travel.

(2) No witness on behalf of the state in any civil action, matter or proceeding, on behalf of either party in any criminal action or proceeding, on behalf of a municipality in a forfeiture action or on behalf of an indigent respondent in a paternity proceeding shall be entitled to any fee in advance, but shall be obliged to attend upon the service of a subpoena as therein lawfully required.

■ Actions after the sale

BEFORE THE SALE:

Before conducting a sale of foreclosed property, the sheriff must contact the clerk of the federal bankruptcy court to learn whether the court has granted a stay of relief on the property.⁵⁷ If a stay is in effect, you may not conduct a sale.

Federal court records – including records of bankruptcy proceedings – is available through the Public Access to Court Electronic Records system, or PACER. Wisconsin has two federal bankruptcy courts:

Eastern District of WI – Bankruptcy Court Info:
<http://www.wieb.uscourts.gov/>
(866) 582-3156

Western District of WI – Bankruptcy Court Info:
<http://www.wiwd.uscourts.gov>
(866) 241-7123

If the defendant has filed a bankruptcy petition, you should contact the plaintiff or plaintiff's attorney to determine whether the bankruptcy court has granted a stay. If a stay is in effect, have a copy of the stay order faxed or emailed to you. You may not conduct a sale if a stay is in effect.

Wisconsin statutes spell out strict requirements for the notice of a sheriff's sale of realty.⁵⁸ The sheriff must publish a written notice that contains the following information:

⁵⁷ Sheriff; duties. The sheriff of a county shall do all of the following:

...

(12) 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.

Wis. Stat. § 59.27

⁵⁸ Notice of sale of realty; manner; adjournment.

(1) The time and place of holding any sale of real estate on execution shall be publicly advertised 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 and, if the county where such real estate is to be sold maintains a website, by posting a notice on the website, at least 3 weeks prior to the date of sale; and also in one public place of the town or municipality in which the real estate is situated, if it is not in the town or municipality where the sale is to be held and, if the county where such real estate is situated maintains a website, also posting a notice on the website. If the town or municipality where such real estate is situated or is to be sold maintains a website, the town or municipality may also post a notice on its website.

(2) A copy of the notice of sale shall be printed each week for 3 successive weeks in a newspaper of the county prior to the date of sale.

Legal description of the real estate to be sold;

Street address of the real estate (if there is one);

Date, time, and place of sale; and

Deposit or down payment requirements.

The notice also must be published according to the requirements of Wis. Stat. § 815.31(1).

County website: If the county where the real estate is being sold has a website, a notice must be posted at least three weeks before the date of sale. If the real estate is located in a different county, notice must be posted on that county's website as well.

Town or municipality website: If the town or municipality where the real estate is located or is to be sold has a website, notice may be posted on those websites. This is optional.

Public place: At least three weeks before the sale, notice must be posted in one public place in the town or municipality where the sale will occur. If the real estate is in a different town or municipality, notice must be posted in one public place there as well.

Newspaper. If one or more newspapers are published in the county, a copy of the notice of sale must be printed each week for three successive weeks before the date of sale. If the county has more than one newspaper, the notice only must be published in one of them. Notice shall be published in a newspaper printed at Madison if (a) no newspaper is published in the county and (b) the premises are not occupied by any person against whom the execution is issued or by some person

(3) If there be no newspaper published in the county and the premises are not occupied by any person against whom the execution is issued or by some person holding as tenant or purchaser under the person against whom the execution is issued, such notice shall be so published in a paper printed at Madison.

(4) The court, or a judge, upon application of the party issuing the execution shall direct, by order, the newspaper in which the publication of the notice is to be made.

holding as tenant or purchaser under the person against whom the execution is issued. A judge may order the notice published in a different newspaper.

Additional notice is required if the real estate is mortgaged. If the real estate is mortgaged, the notice must include the sum of the judgment⁵⁹ and an explanation of the minimum bidder requirements.⁶⁰ If the Department of Veterans Affairs is a party, the judgment must direct that it receive notice by registered mail at least 3 weeks before the date of sale.⁶¹

Examples:

- Property located in same municipality as the sale requires posting in one location in that municipality.
- Property located in municipality A, sale being held in municipality B. One posting required in municipality A and one posting required in municipality B.
- 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 the 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.

⁵⁹ *Notice of in-person sale.* Except as provided in par. (bm), the sheriff or referee who makes sale of mortgaged premises, under a judgment therefor, shall give notice of the time and place of sale as provided under s. 815.31 or in such other manner as the court shall in the judgment direct. The sheriff or referee shall include in the notice of sale the street address, if any, of the real estate to be sold and the sum of the judgment.

Wis. Stat. § 816.16(1)(a).

⁶⁰ In any public place or on any Internet site where the sheriff or referee posts a notice of sale, the sheriff or referee also shall post an explanation regarding the minimum bidder qualifications under s. 846.155 (2) that a participant in the sale must meet and a statement that, before the sale may be confirmed, a purchaser that is not a party in the foreclosure action must submit an affidavit to the court affirming that the purchaser meets those minimum bidder qualifications.

Wis. Stat. § 846.16(1)(d)

⁶¹ Notice to department of veterans affairs. In addition to providing notice of sale under par. (a) or (bm), if the department of veterans affairs is 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.

Wis. Stat. § 846.16(1)(cm)

The statutes prescribe significant consequences if the responsible officer does not give correct notice.⁶² Defacing or taking down a notice of sale is punishable by a fine of up to \$50.⁶³

The sheriff may adjourn a sale for up to 3 months if the sheriff considers it to be in the interest of all the persons concerned.⁶⁴ If the sale is going to be adjourned for “more than one day,” further notice is required. The recommended practice is:

- 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 three weeks, depending on new date of sale.)

All sales must be done by auction between the hours of 9:00 a.m. and 5:00 p.m.

DURING THE SALE:

The best practices identified for conducting a sale are:

- Read the Notice of Sale, being sure to include:
 - Case number
 - Parties involved
 - Address/legal description
 - Terms listed on the notice
 - Any other notices or announcements
- Open bidding (Some agencies permit the plaintiff to fax or email an opening bid)

⁶² **Execution sale without notice.** Any officer who shall sell real estate upon execution without having given the previous notices directed by s. 815.31, or otherwise than in the manner prescribed by law, shall be liable to the party injured in the sum of \$1,000 damage and also for the actual damages sustained.

Wis. Stat. § 815.34

⁶³ **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.

Wis. Stat. § 815.35

⁶⁴ 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.

Wis. Stat. § 815.31(5)

- If Plaintiff is not present and has not submitted an opening bid, see Wis. Stat § 815.31(5)
- If plaintiff is present and no one bids, note this on the paperwork and submit the report to courts.
- Accept and record bids until one party is successful bidder.
- Does the successful bidder meet the terms of the sale?
 - ✓ 10% down payment pursuant to notice of sale
 - ✓ If yes, announce a successful sale and release any other bidders for this property.
 - ✓ If bidder does not meet terms of sale, “at the time of sale”, declare the sale invalid and start the sale over. Note this on the Sheriff’s report of sale.
- Sale Results
 - If property is sold to the plaintiff or a party to the action, no further action is necessary on the sale date.
 - If the successful bidder is a third party (someone who is 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.
 - A successful third-party bidder must complete an Eligible Third Party Bidder Affidavit, which should be submitted to the clerk of courts before the confirmation of sale hearing.⁶⁵
 - Officers involved in the sale are not eligible purchasers.⁶⁶

AFTER THE SALE⁶⁷

⁶⁵ Filing affidavit of minimum bidder qualifications.

(a) If the grantee of a deed executed under s. 846.16 (1) (a) is not a party in the foreclosure action or the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, the grantee shall, no later than the time scheduled for confirmation of sale, file with the clerk of court an affidavit affirming that, as of the date on which the affidavit is filed, the grantee meets all of the qualifications described in sub. (2). The affidavit also shall identify the name and street address of a person in this state that is authorized to accept service of process for the grantee. If the grantee is not an individual, an individual who is authorized to act on behalf of the grantee shall sign the affidavit.

(b) The director of state courts shall provide to the clerk of court in each county a form for use in filing affidavits required under this subsection. The form shall require a person that files the affidavit to acknowledge that the person is aware that, if a false representation is made in the affidavit, the person, and the individual who signs the affidavit on behalf of the person, may be subject to the penalties described in sub. (6).

Wis. Stat. § 846.155(5)

⁶⁶ **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.

Wis. Stat. § 815.37

⁶⁷ Procedures after sale.

After mortgaged premises are sold and after the purchaser complies with the terms of the sale, the sheriff or referee is required to execute a deed of the mortgaged premises that were sold. Within 10 days after the sale, the sheriff or referee must file a report of the sale with the clerk of court and deliver to the clerk of court the deed to the mortgaged premises and the proceeds of the sale.

Best practices are to check the report of sale to verify the information is correct.

- Verify the case number, county, parties, and legal description.
- Confirm that the report accurately describes what occurred at the sale.
- Confirm that the listed sale price is the actual successful bid from date of sale.
- Ensure the proper documents are included or attached
 - Proof of Publication (must have been published *three* weeks prior to sale date, a total of twenty one days.)
 - Affidavit or Certificate of Posting
 - Original Notice of Posting
 - Sheriff's Deed – Correct Land description and physical address.
 - Electronic Real Estate Transfer Receipt and Electronic Real Estate Transfer Return. (Note that the sheriff should be listed as the “grantor's agent,” not the preparer.)

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.

If errors are made on the deed, the statutes prescribe the means of correction.⁶⁸

(a) Execution of deed. After a sale of mortgaged premises under sub. (1g) and upon compliance with the terms of the sale, the sheriff or referee shall make and execute to the purchaser, the purchaser's assigns, or personal representatives a deed of the mortgaged premises sold that sets forth each parcel of land sold to the purchaser and the purchase price paid for each parcel.

(b) Deductions from proceeds; transmittals to clerk of court. No later than 10 days after a sale of mortgaged premises under sub. (1g), the sheriff or referee shall do all of the following:

1. File a report of the sale with the clerk of court.

2. Deliver to the clerk of court all of the following:

a. The deed to the mortgaged premises executed under par. (a).

b. After deducting the costs and expenses of the sale, unless the court orders otherwise, the proceeds of the sale ordered by the court.

Wis. Stat. § 846.16(1r)

⁶⁸ Execution requirements.

The confirmation of sale hearing is when the successful bidder assumes ownership of the property. If the tenants of the property refuse to surrender possession, the new owner may seek a writ of assistance from the court.⁶⁹ A writ of assistance is valid for 60 days after issuance and may be issued by the courts any time after the confirmation of sale hearing.

Be sure to read the writ of assistance and follow the order.⁷⁰ Some writs of assistance will order the sheriff to remove persons from the property, while others will order the removal

(a) A correction instrument shall be acknowledged or authenticated in accordance with s. 706.06 or ch. 140. It shall recite the document number of the conveyance, the names of the grantor and grantee, and, if given on the conveyance, the volume and page where the conveyance is filed or recorded.

(b)

1. Except as otherwise provided in this paragraph, a correction instrument that is executed after May 28, 2010, may be executed by a person having personal knowledge of the circumstances of the conveyance and of the facts recited in the correction instrument, including the grantor, the grantee, the person who drafted the conveyance that is the subject of the correction instrument, or the person who acted as the settlement agent in the transaction that is the subject of the conveyance, and shall recite the basis for the person's personal knowledge. A correction instrument that was executed before May 28, 2010, is not rendered ineffective by reason of the instrument's failure to recite that the maker had the knowledge or capacity required under this subdivision.

2. A correction instrument that makes the correction under sub. (1) (e) shall be signed by the consenting party, or an heir, successor, or assignee of the party.

3. A correction instrument that adds, removes, or replaces a divisible parcel in a conveyance shall be signed by the following persons:

a. If the correction instrument supplies a lot, block, unit, or building number or letter that was omitted from a conveyance, by any party identified in subd. 1.

b. If a parcel is being added to a conveyance that also correctly conveys other land, only by the grantor.

c. If a parcel is being removed from a conveyance that also correctly conveys other land, only by the grantee.

d. If a lot or unit number or letter is being corrected and the lot or unit incorrectly recited in the conveyance is also owned by the grantor, only by the grantee.

e. If a lot, block, unit, or building number or letter is being corrected and the lot or unit incorrectly recited in the conveyance is not also owned by the grantor, by any party identified in subd. 1.

(c) A person who executes and records a correction instrument shall send notice of that fact by 1st class mail to all parties to the transaction that was the subject of the conveyance at their last-known addresses.

Wis. Stat. § 706.085 (2)

⁶⁹ 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.

Wis. Stat. § 815.11

⁷⁰ **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.

Wis. Stat. § 815.63

of persons and property from the residence. The handling of property, if required by the court order, should be done by a bonded mover. The statutes do not address handling of property that has no value. Consult your corporation counsel for guidance.

KEY POINTS

- **Sale of mortgaged premises shall be advertised by posting a written notice in one public place in the town/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 *three* successive weeks in a newspaper of the county prior to the date of sale. *Three* successive weeks should be twenty one 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.**
-

NOTICE OF PROBATE

Probate proceedings also require notice. The statute provides for three methods of service – mail, publication, and personal service.⁷¹ Personal service must be made at least 10 days before the hearing.

⁷¹ Notice; manner of giving.

(1) Generally. Unless the statute requiring notice in a particular proceeding provides otherwise, notice required in the administration of an estate or other proceeding shall be given either by mail under sub. [\(2\)](#) or by personal service under sub. [\(3\)](#). The first notice given by mail in any administration or other proceeding must be accompanied by notice by publication given under sub. [\(4\)](#). Notice by publication in addition to mailed notice is required for subsequent hearings if the name or the post-office address of one or more persons entitled to notice has not been ascertained.

(2) Service by mail. 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.

(3) Personal service. Personal service shall be made at least 10 days before the hearing under s. [801.11](#), except as that section provides for service by publication and except that substituted service under s. [801.11 \(1\) \(b\)](#) may not be made outside this state.

(4) Service by publication. Unless a statute provides otherwise, every court notice required to be given by publication shall be published as a class 3 notice in a newspaper published in the county, eligible under ch. [985](#), as the court by order directs.

NOTICE OF APPOINTMENT OF GUARDIAN FOR INCOMPETENT PERSON, MINOR, OR SPENDTHRIFT

Courts have the power to appoint a guardian for an individual's estate⁷² if the individual is an incompetent person,⁷³ a spendthrift,⁷⁴ or a minor.

The notice of hearing for the appointment of a guardian for an incompetent person or spendthrift must be served personally upon the proposed ward and existing guardian, if any, at least 10 days before the time set for hearing. If the proposed ward is in custody or confinement, the notice must be served by registered or certified mail on the proposed ward's custodian, who is required to serve it on the proposed incompetent immediately.⁷⁵

⁷² Appointment of guardian.

(1) A court may appoint a guardian of the estate for an individual if the court determines that the individual is a minor....

(2)

(a) A court may appoint a guardian of the estate for an individual if the court finds by clear and convincing evidence that the individual is aged at least 18 years and is a spendthrift.

(3)

(a) A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual based on a finding that the individual is incompetent...

Wis. Stat. § 54.10

⁷³A court may find an individual "incompetent" only if all of the following are true:

1. The individual is aged at least 17 years and 9 months.

2. For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.

3. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:

a. The individual has property that will be dissipated in whole or in part.

b. The individual is unable to provide for his or her support.

c. The individual is unable to prevent financial exploitation.

4. The individual's need for assistance in decision making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, a supported decision-making agreement under ch. [52](#), or other means that the individual will accept.

Wis. Stat. § 54.10(3)(a)

⁷⁴ "Spendthrift" means a person who, because of the use of alcohol or other drugs or because of gambling or other wasteful course of conduct, is unable to manage effectively his or her financial affairs or is likely to affect the health, life, or property of himself, herself, or others so as to endanger his or her support and the support of his or her dependents, if any, or expose the public to responsibility for his or her support.

Wis. Stat. § 54.01(31)

⁷⁵ Notice of hearing, service, and delivery. Upon the filing of a petition for guardianship of the person or of the estate, including appointment or change of a guardian, if the court is satisfied as to compliance with s. 54.34, the court shall, except as provided in sub. (3), order the petitioner to serve notice on the proposed ward and guardian, if any, and to deliver notice to interested persons of the time and place of the hearing, as follows:

The statute requires certain additional individuals to be served personally or by mail at least 10 days before the hearing.

The notice requirements for a hearing for the appointment of a guardian are slightly different.⁷⁶ The following persons must be served:

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

Service may be accomplished by either:

- 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
- Personal service in the standard way except that service cannot be made by publication and substituted service may not be made outside of the state.

(a) On the proposed ward or ward by personal service and an existing guardian, if any, by personal service or by registered or certified mail at least 10 days before the time set for hearing. If the proposed ward or ward is in custody or confinement, the petitioner shall have notice served by registered or certified mail on the proposed ward's or ward's custodian, who shall immediately serve it on the proposed ward or ward. The process server or custodian shall inform the proposed ward or ward of the complete contents of the notice and petition, motion, or other required document; certify on the notice that the process server or custodian served and informed the proposed ward or ward; and return the certificate and notice to the court.

(b) Personally or by mail at least 10 days before the time set for hearing, to all of the following:

1. The proposed ward's counsel, if any.
2. The proposed ward's guardian ad litem.
3. Any presumptive adult heirs, as specified in s. 851.09, of the proposed ward.
4. Any other interested persons, unless specifically waived by the court.
5. The agent under any durable power of attorney or power of attorney for health care of the ward.
6. Any person who has legal or physical custody of the proposed ward.
7. Any public or private agency, charity, or foundation from which the proposed ward is receiving aid or assistance.
8. The proposed guardian for the proposed ward.
9. Any other person that the court requires.

Wis. Stat. § 54.38(2)

⁷⁶ Notice of hearing for appointment of guardian for a minor. If the proposed ward is a minor, the court shall order delivery of notice by the petitioner of the time and place of the hearing to all of the following:

- (a)** The proposed ward's spouse, if any.
- (b)** The proposed ward's parent, unless the parent's parental rights have been judicially terminated.
- (c)** The proposed ward, if the proposed ward is over 14 years of age.
- (d)** Any other person that has the legal or physical custody of the minor.

Wis. Stat. § 54.38(3)

WRITS OF REPLEVIN

Replevin is an action to regain personal property unlawfully held or retained by another. Depending on the value of the property claimed, a replevin action can be filed either as a small claims action or a large claims action. The service requirements for replevin complaints are the same as for other types of small claims (see Wis. Stat. § 799.05) or large claims actions (see Wis. Stat. § 801.02).

There are two types of writs of replevin:

- Pre-judgment replevin: the plaintiff is seeking immediate delivery of the property. See Wis. Stat. § 810.02.
- Post Judgment replevin: the court orders after a judgment has been imposed. See Wis. Stat. § 810.14.

It is critical to determine whether a writ of replevin is for pre- or post-judgment replevin.

WRIT FOR PRE-JUDGMENT REPLEVIN

At any time before judgment in a replevin action, the court may issue an order directing the sheriff to take property from the defendant or someone holding it for the defendant and deliver it to the plaintiff.⁷⁷

A pre-judgment replevin action must consist of the following when accepted and executed by the sheriff's office:

- Summons;
- Affidavit or complaint;
- Bond;
- Bond approval by a judicial officer; and
- Requisition to the sheriff⁷⁸

⁷⁷ **Order directing return of property.** An order directing the return of property to the plaintiff at any time before final judgment in a replevin action shall be issued only by a judge or other judicial officer on the affidavit of the plaintiff made after summons is issued.

Wis. Stat. § 810.02

⁷⁸ **Requisition to sheriff.** Upon the issuance of an order making a factual determination set forth in s. 810.02 and upon the execution of a bond in an amount approved by the judge or judicial officer and with sufficient sureties approved by the judge or judicial officer, to secure the value of the property, the prosecution of the action, the return of the property to the defendant, if the return thereof be adjudged, and payment to the defendant of such sum as may be recovered against the plaintiff, the sheriff shall then 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.

Wis. Stat. § 810.03

The following steps are best practice for handling a pre-judgment replevin:

- Verify the above paperwork
- Address any issues related to prepayment.
- Read the court order to determine who is to move the property and where it is to be taken for storage/safekeeping.
- Consider obtaining a civil search warrant prior to acting on the pre-judgment replevin.⁷⁹ If you are denied access to the property, obtain a civil warrant.
- Although there is no requirement to serve the defendant prior to seizing the property, it's good practice to leave a copy of the order at the premises and/or try to notify the defendant of the seizure. You also should notify local law enforcement of the action to resolve unnecessary theft reports.

Once the property is in the hands of the party listed in the court order, the sheriff's duties are concluded. Return to the courts must be completed by the sheriff and returned to the courts within a reasonable time.

WRIT FOR POST-JUDGMENT REPLEVIN

A post-judgment replevin is ordered by the courts after a judgment has been imposed.⁸⁰ This writ is then directed to the sheriff of the county where the items are located. When you review a post-judgment writ of replevin, make sure that the writ:

- Is directed to the sheriff of your county;
- Gives a detailed description of property to be seized, including serial numbers;
- Is signed by the judge, court commissioner, or clerk of courts; and
- Provides the necessary plaintiff and defendant information.

The best practices for handling a post-judgment replevin include the following steps:

⁷⁹ **Property in building, how taken.** If the property or any part thereof 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. The plaintiff may then apply to the court for a warrant upon a sufficient showing of probable cause that the property is contained in the building or enclosure and upon delivery of the warrant of the judicial officer to the sheriff the sheriff may then enter and take the property.

Wis. Stat. § 810.09

⁸⁰ **810.14 Judgment in replevin.** In any action of replevin judgment for the plaintiff may be for the possession or for the recovery of possession of the property, or the value thereof in case a delivery cannot be had, and of damages for the detention; and when the property shall have been delivered to the defendant, under s. 810.06, judgment may be as aforesaid or absolutely for the value thereof at the plaintiff's option, and damages for the detention. If the property shall have been delivered to the plaintiff under ss. 810.01 to 810.13 and the defendant prevails, judgment for the defendant may be for a return of the property or the value thereof, at the defendant's option, and damages for taking and withholding the same.

- Verify the above paperwork
- Address prepayment;
- If vehicles are to be taken, confirm the VINs through the Department of Transportation.
- Contact the plaintiff to determine who is to move the property and where it is to be taken for storage/safekeeping.
- There is no requirement to serve the defendant prior to seizing the property, but best practices are:
 - It is a good practice to leave a copy of the order at the premises and/or make an attempt to notify the defendant of this seizure.
 - Notify the local law enforcement of this action to avoid unnecessary theft reports.
- Execute the writ of replevin.
- The writ is for specific property, which can be seized anywhere within your jurisdiction.
- If denied access, consult Wis. Stat. § 810.09, to obtain a civil search warrant.
- Once the property has been seized, notify the plaintiff of your actions.
- Return to the courts must be completed by the sheriff and returned to the courts within a reasonable time.
- A bond may or may not be necessary based upon the facts of the writ and any reasonable doubt that may exist.

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 or more than 30 days from the issue date.**
- **Replevin as a large claims action must be served within 90 days of filing.**
- **Replevins can be pre-judgment or post-judgment, and each has its own specific requirements.**
- **Civil search warrants are obtained by the plaintiff and served by the sheriff. They should be served within a reasonable time after issuance.**

ATTACHMENT

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 judgment. 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 the sheriff can be given 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 appraisalment.⁸¹

WRIT OF EXECUTION

Once a part has obtained a judgment against another, they may enforce the judgment in a manner provided by law. A judgment that requires the payment of money or delivery of property may be enforced by execution.⁸²

Writs of execution can be quite involved and therefore are difficult to explain fully in a manual. Whenever you receive a writ of execution, you should refer to Wis. Stat. ch. 815, which sets forth the procedures for the various writs involved. Additionally, writs of execution can involve procedures that are discussed elsewhere in this manual including the sections on sale of personal property and notice of foreclosure.

⁸¹ 811.10 Directions to sheriff; several writs.

(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 appraisalment thereof, which appraisalment shall be signed by them, and the appraisalment 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.

(2) If 2 or more writs against the same defendant shall be executed on the same property an inventory and appraisalment 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 appraisalment are made, giving the title of the action; and the officer shall state in his or her return the fact of such endorsement.

⁸² **815.02 Judgments, enforced by execution.** A judgment which requires the payment of money or the delivery of property may be enforced in those respects by execution. Where it requires the performance of any other act a certified copy of the judgment may be served upon the party, person or officer who is required to obey the same, and if he or she refuse he or she may be punished for contempt, and his or her obedience enforced.

GENERAL CONCEPTS

A writ of execution may be issued after a judgment has been recorded and perfected. The writ may issue at any time within 5 years of the rendition of the judgment. Writs are valid for 60 days and may be renewed until the judgment is satisfied or expires.⁸³ Wis. Stat. § 815.05 sets out in detail the required contents of the writ.

All executions are returnable to the clerk of the issuing court within 60 days of receipt, but an officer who has levied upon property before the 60 days expired may retain the execution until the property is sold.⁸⁴

There are three kinds of executions.⁸⁵

- An execution against the property of the judgment debtor;
- An execution for the delivery of property; and
- An execution against the judgment debtor's person (also known as a civil bench warrant).

Each will be discussed in the following subsections.

⁸³ 815.04 Execution, when issued.

(1)

(a) Upon any judgment of a court of record perfected as specified in s. 806.06 or any judgment of any other court entered in the judgment and lien docket of a court of record, execution may issue at any time within 5 years after the rendition of the judgment. When an execution has been issued and returned unsatisfied in whole or in part other executions may issue at any time upon application of the judgment creditor.

(b) If no execution on a judgment as described in par. (a) is issued within 5 years after the rendition of the judgment, or, if application is made by one other than the judgment creditor, execution may be issued only upon leave of the court, in its discretion, upon prior notice to the judgment debtor, served as a summons is served in a court of record. If the judgment debtor is absent or a nonresident, service of the notice may be by a class 3 notice, under ch. 985, or in any other manner that the court directs. Application shall be by the petition of the judgment creditor or of the assignee, setting forth that the judgment or a portion of the judgment remains unpaid, and that the petitioner is the bona fide owner of the judgment, for value.

(c) No executions shall issue or any proceedings be commenced upon any judgment after 20 years from the rendition of the judgment.

(2) When the sheriff holds an execution against property any person indebted to the judgment debtor may pay to the sheriff the amount of the indebted person's debt not exempt from execution or so much thereof as shall be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

⁸⁴ **815.06 Execution, when returnable.** Every execution shall be made returnable, within 60 days after its receipt by the officer, to the clerk of the court from which it issued but if the officer has levied upon property previous to the expiration of the 60 days the officer may retain such execution until the officer has sold the property. The officer shall state in the officer's return how the officer executed the writ.

⁸⁵ **815.03 Executions, kinds.** There are 3 kinds of executions: one against the property of the judgment debtor, another against the judgment debtor's person, and the 3rd for the delivery of property, or such delivery with damages for withholding the same. They are the process of the court, and shall be as prescribed by s. 815.05.

EXECUTION AGAINST PROPERTY

When you receive a writ of execution against property, you should first determine if the writ is valid on its face. The following information about the judgment must be present:

- The writ (original) must contain the seal of the court and must be signed by the clerk of circuit court (this may be an electronic signature)
- The county where the judgment or a certified copy of the judgment or transcript is filed
- The names of the parties
- The amount of the judgment, if it is for money
- The amount due on the judgment
- The time of entry in the judgment and lien docket in the county to which the execution is issued
- Date/Time stamp when received by the Sheriff.

You also should evaluate the following paperwork:

- Bond – For value of property being taken, pursuant to your policy.
- Indemnification of the sheriff and the county pursuant to Wis. Stat. § 815.24.
- Value of bond: does it meet the criteria of your policy/state statute?
- Court case numbers, parties to the case.
- Required signatures (plaintiff or plaintiff's agent, bond agent)
- Property to be taken may be listed on the bond.
- Power of attorney paperwork.

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

When you initially receive the execution against property, you need to determine the actual amount required to satisfy the judgment.

1. Calculate the “net due” by identifying the total judgment and costs from the execution, less any listed satisfactions/releases or modifications.
2. On the lower left of the Execution paperwork the plaintiff should list the interest that is due and provide a total balance due as of a specific date.
3. Also in this section, the plaintiff should list the per diem interest calculation. This is the amount of interest based on the “total balance due to date.” To compute this, multiply the per diem (per day) amount by the number of days from the “Total balance due date” to the current date and add this to the total balance due.

If the per diem is not completed, you may want to advise the plaintiff that if this is not filled in, the Sheriff will not be collecting any additional interest. The per diem amount may change every 60 days as the execution is renewed.

This will give you the actual amount required to satisfy the judgment as of that date.

NOTE: Some counties have adopted Wis. Stat. § 814.70(5), which allows the sheriff to collect an additional fee from the debtor

A writ for execution against the property of the judgment debtor will show a dollar amount and direct the sheriff to seize property of the defendant to satisfy the judgment.

Example from “Execution Against Property” Form GF-115 received by the Sheriff March 31, 2014

Total Judgment and costs	\$110,000
Satisfaction/Releases/Modifications	10,000
Net Due	\$100,000
“To be completed by creditor or attorney”	
Net due from above	\$100,000
Interest due to date of ____ (Ex 1/1/14)	1,000
Total balance due to date of ____ (Ex 1/1/14)	\$101,000
Per diem interest calculation \$ ____ (Ex \$5/day)	\$450

Here are the best practices to attempt to satisfy the writ:

- Attempt to locate the defendant/debtor.
 - If you cannot locate the defendant or any property owned by the defendant within your county, you should return the writ to the courts unsatisfied.
 - If you cannot 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 seizure below)
 - If you can locate defendant/debtor contact the defendant and make demand for total judgment amount, 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 convert the check to a bank check. Additional costs may be 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.
- When issuing a receipt, in any of the above circumstances, avoid using "Fully Satisfied" or "Wholly Satisfied". It is better to indicate "payment ref case #....."
- If defendant cannot 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:
 - Payment plan: A payment plan may be created 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. If the payment plan goes longer than 60 days after issuance of the writ, you must return the writ partially satisfied and have the plaintiff obtain a new writ.
 - Partial payment: 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, and attempt to collect the balance within 60 days after issuance of the writ. If you cannot collect the balance, return the writ as partially satisfied.
 - No payment/no seizable property: If the defendant cannot or will not make any payments and you cannot locate any property to be seized, notify the plaintiff of your findings and return the writ to the courts unsatisfied.
 - No payment/potentially seizable property: If, based on your contact, observations and investigation, you find there is property that could be seized, contact the plaintiff to discuss a writ of execution for the delivery of property.

EXECUTION FOR THE DELIVERY OF PROPERTY

A writ of execution for the delivery may be based on a list of property shown on the writ itself, a list obtained during a supplemental hearing, or property located in the course of your investigation.

Some types of property are statutorily exempt or partially exempt from seizure. The debtor must affirmatively claim the exemption or select specific property in which to claim an exemption. The claim may be made at the time property is seized or within a reasonable time after the seizure. It must be made before disposition of the property by sale or court order.⁸⁶ Exempt property may be subject to an appraisal requirement.⁸⁷

A complete list of property exempt from execution appears in Wis. Stat. § 815.18(3).⁸⁸

⁸⁶ Claiming exemptions.

(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.

Wis. Stat. § 815(6).

⁸⁷ 815.19 Levy on personal property; appraisal.

(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 therefrom 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 appraisalment thereof, which appraisalment shall be in writing, be signed by the appraisers and be prima facie evidence of the value of the property appraised. The appraisalment, 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.

(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.

⁸⁸ EXEMPT PROPERTY. The debtor's interest in or right to receive the following property is exempt, except as specifically provided in this section and ss. [70.20 \(2\)](#), [71.91 \(5m\)](#) and [\(6\)](#), [74.55 \(2\)](#) and [102.28 \(5\)](#):

(a) *Provisions for burial.* Cemetery lots, aboveground burial facilities, burial monuments, tombstones, coffins, cremation urns, urn vaults, outer burial containers, or other articles for the burial of the dead owned by the debtor and intended for the burial of the debtor or the debtor's family.

(b) *Business and farm property.*

1. Equipment, inventory, farm products, and professional books used in the business of the debtor or the business of a dependent of the debtor, not to exceed \$15,000 in aggregate value.

2. If the debtor does not claim an exemption under subd. 1., any interest of the debtor, not to exceed \$15,000 in aggregate value, in a closely held business that employs the debtor or in whose business the debtor is actively involved.

(c) *Child support, family support or maintenance payments.* Alimony, child support, family support, maintenance or separate maintenance payments to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

(d) Consumer goods. Household goods and furnishings, wearing apparel, keepsakes, jewelry and other articles of personal adornment, appliances, books, musical instruments, firearms, sporting goods, animals, or other tangible personal property held primarily for the personal, family or household use of the debtor or a dependent of the debtor, not to exceed \$12,000 in aggregate value.

(df) County fairs and agricultural societies. All sums paid as state aid under s. [93.23 \(1\)](#) to county fairs and agricultural societies.

(ds) Federal disability insurance benefits. All moneys received or receivable by a person as federal disability insurance benefits under [42 USC 401](#) to [433](#).

(e) Fire and casualty insurance. For a period of 2 years after the date of receipt, insurance proceeds on exempt property payable to and received by the debtor, if the exempt property has been destroyed or damaged by fire or casualty of any nature.

(ef) Fire and police pension fund. All money paid or ordered to be paid to any member of any fire or police department or to the surviving spouse or guardian of the minor child or children of a deceased or retired member of any such department, which money has been paid or ordered to be paid to any such person as a pension on account of the service of any person in any such department in any city in this state whose population exceeds 100,000.

(em) Fire engines and equipment. All fire engines, apparatus and equipment, including hose, hose carts and hooks and ladders, belonging to or which may hereafter belong to any town, city or village in this state, and which are or may be kept and used for the protection of property in such town, city or village from fire, together with the engine houses and hooks and ladder houses for the protection of the same, and the lot or lots on which such engine and hook and ladder houses may be situated, when owned by any such town, city or village; and any lot or lots owned, used and occupied by any such town, city or village for corporate purposes.

(f) Life insurance and annuities.

1. In this paragraph, "applicable date" means the earlier of the following:

a. The date on which the exemption is claimed.

b. The date, if any, that the cause of action was filed that resulted in the judgment with respect to which the execution order was issued.

2. Except as provided in subd. [3](#). and par. [\(j\)](#), any unmatured life insurance or annuity contract owned by the debtor and insuring the debtor, the debtor's dependent, or an individual of whom the debtor is a dependent, other than a credit life insurance contract, and the debtor's aggregate interest, not to exceed \$150,000 in value, in any accrued dividends, interest, or loan value of all unmatured life insurance or annuity contracts owned by the debtor and insuring the debtor, the debtor's dependent, or an individual of whom the debtor is a dependent.

3.

a. If the life insurance or annuity contract was issued less than 24 months before the applicable date, the exemption under this paragraph may not exceed \$4,000.

b. If the life insurance or annuity contract was issued at least 24 months but funded less than 24 months before the applicable date, the exemption under this paragraph is limited to the value of the contract the day before the first funding that occurred less than 24 months before the applicable date and the lesser of either the difference between the value of the contract the day before the first funding that occurred less than 24 months before the applicable date and the value of the contract on the applicable date or \$4,000.

(g) Motor vehicles. Motor vehicles not to exceed \$4,000 in aggregate value. Any unused amount of the aggregate value from par. [\(d\)](#) may be added to this exemption to increase the aggregate exempt value of motor vehicles under this paragraph.

(h) Net income. Seventy-five percent of the debtor's net income for each one week pay period. The benefits of this exemption are limited to the extent reasonably necessary for the support of the debtor and the debtor's dependents, but to not less than 30 times the greater of the state or federal minimum wage.

(i) Life insurance claims, personal injury or wrongful death claims.

1. Any of the following payments:

a. A payment to the debtor under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

b. A payment resulting from the wrongful death of an individual of whom the debtor was a dependent, in an amount reasonably necessary for the support of the debtor and the debtor's dependents.

c. A payment, not to exceed \$50,000, resulting from personal bodily injury, including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

d. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent in an amount reasonably necessary for the support of the debtor and the debtor's dependents.

Before the actual seizure of property, you need to estimate the associated costs. These include moving, storage, sheriff's fees, sale fees, and bond fees. (Do NOT consider liens.) Prepayment of these fees may be required. See Wis. Stat. § 814.70. If the cost of the

2. Any property traceable to payments under subd. [1.](#) is exempt.

(j) Retirement benefits.

1. Assets held or amounts payable under any retirement, pension, disability, death benefit, stock bonus, profit sharing plan, annuity, individual retirement account, individual retirement annuity, Keogh, 401-K or similar plan or contract providing benefits by reason of age, illness, disability, death or length of service and payments made to the debtor therefrom.

2. The plan or contract must meet one of the following requirements:

a. The plan or contract complies with the provisions of the internal revenue code.

b. The employer created the plan or contract for the exclusive benefit of the employer, if self-employed, or of some or all of the employees, or their dependents or beneficiaries and that plan or contract requires the employer or employees or both to make contributions for the purpose of distributing to the employer, if self-employed, the employees, or their dependents or beneficiaries, the earnings or the principal or both of a trust, annuity, insurance or other benefit created under the plan or contract and makes it impossible, at any time prior to the satisfaction of all liabilities with respect to beneficiaries under a trust created by the plan or contract, for any part of the principal or income of the trust to be used for or diverted to purposes other than for the exclusive benefit of those beneficiaries.

3. The plan or contract may permit the income created from personal property held in a trust created under the plan or contract to accumulate in accordance with the terms of the trust. The trust may continue until it accomplishes its purposes. The trust is not invalid as violating the rule against perpetuities or any law against perpetuities or the suspension of the power of alienation of title to property.

4. The benefits of this exemption with respect to the assets held or amounts payable under or traceable to an owner-dominated plan for or on behalf of a debtor who is an owner-employee shall be limited to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

5. This exemption does not apply to an order of a court concerning child support, family support or maintenance payments, or to any judgment of annulment, divorce or legal separation.

6. In this paragraph:

a. "Employer" includes a group of employers creating a combined plan or contract for the benefit of their employees or the beneficiaries of those employees.

b. "Owner-dominated plan" means any plan or contract that meets the requirements of subd. [2.](#) and under which 90 percent or more of the present value of the accrued benefits or 90 percent or more of the aggregate of the account is for the benefit of one or more individuals who are owner-employees. For purposes of this definition, the accrued benefits or account of an owner-employee under a plan or contract shall include the accrued benefits or account of the spouse, any ancestor or lineal descendant, whether by blood or by adoption, or the spouse of such a lineal descendant, of the owner-employee under the same plan or contract.

c. "Owner-employee" means any individual who owns, directly or indirectly, the entire interest in an unincorporated trade or business, or 50 percent or more of the combined voting of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, or 50 percent or more of the capital interest or profits interest of a partnership or limited liability company.

(k) *Depository accounts.* Depository accounts in the aggregate value of \$5,000, but only to the extent that the account is for the debtor's personal use and is not used as a business account.

(m) *Private property from execution against municipalities.* All private property shall be exempt from seizure and sale upon any execution or other process issued to enforce any judgment or decree of any court that has been rendered against any county, town, city, village, technical college district or school district in this state.

(n) *War pension.* All money received by a person, a resident of this state, as pension, compensation, government insurance, or adjusted compensation, back pension, compensation or insurance from the U.S. government on account of military or naval service, and all other money received by a person on account of military or naval service from the U.S. government administered by the U.S. department of veterans affairs, whether the same is in the actual possession of such person, on deposit, or loaned.

(o) *Tuition units.* Tuition units purchased under s. [224.48](#).

(p) *College savings accounts.* An interest in a college savings account under s. [224.50](#).

Wis. Stat. § 815.18(3).

seizure is more than or close to the value of the property, it may not be worthwhile to seize it.

You also should obtain a bond of indemnity to cover the property being seized, including any property that must be moved to access the property being seized. Be sure to consider the following:

- Does the bond indemnify the sheriff and the county?
- Does the value of the bond meet the criteria of your department's policies and the relevant state statute?⁸⁹ Note that it should cover the value of the items being seized, which may not be the same as the amount of the execution.
- Does the bond identify the relevant court case numbers and parties to the case?
- Does the bond contain the signatures of the bond agent and either the plaintiff or the plaintiff's agent?
- Does the bond list the property to be taken?
- Is the power of attorney paperwork included?

When you seize and sell the debtor's property, you are selling the debtor's rights and interest in the property. That means that you are selling the debtor's equity in the property.⁹⁰ A secured party such as a mortgage lender or a bank that has made an automobile loan retains its interest in the property, and you should take this into account when valuing the property.

Example:

Debtors car valued at:	\$10,000
Bank lien	\$ 4,000
Debtors right/interest/equity	\$ 6,000

In this example we would be selling the debtors interest in the car, which is **\$6,000**. The buyer at the sheriff sale is responsible for any public or private liens, which in this case is \$4,000 owed to the bank.

⁸⁹ **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.

⁹⁰ **815.26 Equities sold.** When personal property is subject to a security interest, the right and interest of the debtor in such property may be sold on execution against the debtor, subject to the rights, if any, of the secured party.

You should start a file for a seizure to keep the materials organized. It should include:

- The writ of execution against property
- Any information obtained from the supplemental hearing
- The indemnity bond
- A list of possible to property to seize based on your investigation.

Other issues to consider include scheduling, necessary forms, a storage location or facility, a towing agency, and a sale location where the property is viewable. The viewing time should be a reasonable amount of time based on the amount of property being sold.

- You may only seize property that is located in your county. When you seize property, keep the following in mind:
- 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.
- Property will need to be stored for approximately 30 days to allow for proper posting and sale.
- Compare the property being seized to your paperwork prior to taking any property.
- Bond covers the value of items being seized, which may or not be the same as the amount of the execution.

Sometimes you may find yourself selling the debtor's interest in property that cannot be seized by the sheriff. Most often, this occurs when a vehicle is being held pursuant to a bank, storage facility, or mechanic. The property can remain in their possession and not be viewable at the property sale. You are only selling the debtor's interest in that property. To take possession, the successful bidder must satisfy the lien.

Notice requirements are governed by Wis. Stat. § 815.29.⁹¹ The notice must be posted for at least 20 days. In addition to the posting, you may want to suggest that the plaintiff should advertise the sale in local papers, Craigslist, social media, and other forums.

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

(1) No execution sale of personal property shall be made unless 20 days previous notice of such sale has been given by posting a notice thereof in one public place of the town or municipality where such sale is to be had and, if the county where such sale is to be had maintains a website, by posting a notice on the website. If the town or municipality where such sale is to be had maintains a website, the town or municipality may also post a notice on its website. The notice shall specify 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 hours 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 as provided in ss. 71.91 (5) (c) 2. and 108.22 (3) (b) and in the case of the sale of

You will need the following forms:

- **Public Sale On Execution/Notice of Sale.** The sheriff drafts the notice of sale of personal property form. The sheriff may ask the plaintiff to draft it, but the sheriff sets the terms of sale. The notice should include:
 - Language that states: “The sale of the aforementioned items are subject to all liens (public and private), taxes, titles, and licenses. No warranties are expressed or implied. All property is sold as is.”
 - The date, time, and location of the sale
 - The terms of sale. Most agencies require payment by cash or certified check at the time of sale so that staff do not have to secure the property for a longer period
- The notarized affidavit of posting
- The seizure inventory
- The list of exempt property under Wis. Stat. §§ 815.18 and 815.19
- Sale closure forms for the court packet, including inventory forms, sale sheets, and running costs.

During this time, you should make sure you keep the plaintiff’s attorney up to date on progress in case a civil search warrant is required to secure property.

Wis. Stat. § 815.29 also governs activities on the date of sale. The following list captures best practices for the date of sale:

- Schedule the sale to be held between 9:00 am and 5:00 pm.
- Ensure that the property is available to view at the sale location.
- Consider whether the defendant has notified you or the court of any exemptions under Wis. Stat. §§ 815.18(6) and 815.19, and consider whether the court has granted the exemptions.
- Read the notice of sale, including the case number, parties involved, terms listed on the notice, and any other notices or announcements.
- Open bidding
 - There is no set opening bid. Whoever makes a bid is subject to the requirements of the notice of sale. Unlike a foreclosure sale, where the creditor/bank sets an opening bid, there is no provision for this in Execution sales.
 - If no one bids, note this on the paperwork and submit report to courts. Unsold property should be returned to the party you seized it from.

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.

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

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- The only people who cannot bid on the property are the sheriff or the deputy holding the sale.
 - Accept and record bids until one party is the successful bidder.
 - Evaluate whether the successful bidder meets the terms of the sale?
 - Most agencies require cash payment at time of sale or up to 4 hours after. These terms should be listed on the notice of sale and announced prior to the sale. Make sure you are aware of the requirements that were posted on the notice.
 - There can be issues with permitting the payment to be made within a certain time frame after the sale. What if they don't return? This also means you have to be present for the entire time frame to secure the property or make other arrangements.
 - If the successful bidder meets the terms of sale, announce a successful sale and release any other bidders for this property.
 - If bidder does not meet terms of sale "at the time of sale", declare the sale invalid and start the sale over. Note this on the sheriff's report of sale.
 - For the sale of titled property, provide the following paperwork to the successful bidder:
 - Bill of sale
 - Copy of Execution Against Property
 - Completed Wisconsin DMV form MV2419 "Seized/ Abandoned/unregistered vehicle transfer certificate." The sheriff signs as the "authorized agent."
 - Accept from the purchaser the cash payment and issue a receipt.
 - Follow the court order for disbursement of funds. Often this money is not deposited with the clerk of courts, so be sure to read the order carefully.

Remember that a sale may be adjourned in the same way provided for adjournment of a sale of real estate in Wis. Stat. § 815.31

After the sale, you should complete the court report, along with the sale report paperwork. Be sure you stamp documents. Disburse fees, including sheriff's fees, sale fees, and fees for storage and moving. The remaining funds should go to the plaintiff unless there is a court order detailing the payments.

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. To perform a till tap, do the following:

- 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. When removing cash from the register, be sure to provide a receipt to the defendant.
- If the defendant refuses to open the register, the Deputy can seize the register and obtain a civil search warrant to forcibly open the register to retrieve any cash inside.
- 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.)

It also is possible to levy an execution against real property,⁹² which is defined as “land and improvements to land.” See Wis. Stat. § 66.0217(1)(f). The best practice for doing so is:

- 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.

The sheriff may require prepayment of fees. After the property has been levied, you should obtain a bond of indemnity to cover the property being seized. Be sure to answer the following questions:

- Does the bond indemnify the sheriff and the county?

⁹² **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.

- Does the value of the bond meet the criteria of your department's policies and the relevant state statute?⁹³ Note that it should cover the value of the items being seized, which may not be the same as the amount of the execution.
- Does the bond identify the relevant court case numbers and parties to the case?
- Does the bond contain the signatures of the bond agent and either the plaintiff or the plaintiff's agent?
- Does the bond list the property to be taken?
- Is the power of attorney paperwork included?

When you are selling the debtor's real property, you are selling their rights and interest in the process. In other words, you are selling their equity. This may not be the same as the value of the property.

Example:

Debtors land valued at:	\$100,000
Lien(s)	\$ 40,000
Debtors right/interest/equity	\$ 60,000

The sale of real property has different notice requirements than the sale of personal property.⁹⁴ The sheriff must publish a written notice that contains the following information:

⁹³ **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.

⁹⁴ 815.31 Notice of sale of realty; manner; adjournment.

(1) The time and place of holding any sale of real estate on execution shall be publicly advertised 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 and, if the county where such real estate is to be sold maintains a website, by posting a notice on the website, at least 3 weeks prior to the date of sale; and also in one public place of the town or municipality in which the real estate is situated, if it is not in the town or municipality where the sale is to be held and, if the county where such real estate is situated maintains a

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- Legal description of the real estate to be sold;
 - Street address of the real estate (if there is one);
 - Date, time, and place of sale; and
 - Deposit or down payment requirements.

The notice also must be published according to the requirements of Wis. Stat. § 815.31(1).

County website: If the county where the real estate is being sold has a website, a notice must be posted at least three weeks before the date of sale. If the real estate is located in a different county, notice must be posted on that county's website as well.

Town or municipality website: If the town or municipality where the real estate is located or is to be sold has a website, notice may be posted on those websites. This is optional.

Public place: At least three weeks before the sale, notice must be posted in one public place in the town or municipality where the sale will occur. If the real estate is in a different town or municipality, notice must be posted in one public place there as well.

Newspaper. If one or more newspapers are published in the county, a copy of the notice of sale must be printed each week for three successive weeks before the date of sale. If the county has more than one newspaper, the notice only must be published in one of them. Notice shall be published in a newspaper printed at Madison if (a) no newspaper is published in the county and (b) the premises are not occupied by any person against whom the execution is issued or by some person holding as tenant or purchaser under the person against whom the execution is issued. A judge may order the notice published in a different newspaper.

website, also posting a notice on the website. If the town or municipality where such real estate is situated or is to be sold maintains a website, the town or municipality may also post a notice on its website.

(2) A copy of the notice of sale shall be printed each week for 3 successive weeks in a newspaper of the county prior to the date of sale.

(3) If there be no newspaper published in the county and the premises are not occupied by any person against whom the execution is issued or by some person holding as tenant or purchaser under the person against whom the execution is issued, such notice shall be so published in a paper printed at Madison.

(4) The court, or a judge, upon application of the party issuing the execution shall direct, by order, the newspaper in which the publication of the notice is to be made.

(5) 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.

(6) Every sale shall be at auction between 9 o'clock in the forenoon and 5 o'clock in the afternoon.

Examples:

- Property located in same municipality as the sale requires posting in one location in that municipality.
- Property located in municipality A, sale being held in municipality B. One posting required in municipality A and one posting required in municipality B.
- 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 the 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.

Before the sale, be sure to verify that the property is located within your county. You should start a file for the seizure to keep yourself organized. The file should contain:

- Execution Against Property
- Levy on Real Estate paperwork (be sure to verify the tax number and property description)
- Bond of Indemnity
- Affidavit of Posting –Needs to be notarized
- List of Exemptions 815.18 & 815.19
- Sale closure forms for Court packet (sale sheets, running costs)

Procedures for the day of sale should follow Wis. Stat. § 815.31. Note that the sale may be adjourned, but adjournment for more than one day requires further notice. The statute doesn't spell out the precise notice required, but good practice is:

- 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 three weeks, depending on new date of sale.)

The following list captures best practices for the date of sale

- Schedule the sale to be held between 9:00 am and 5:00 pm.
- The property is NOT available to view prior to sale.
- Consider whether the defendant has notified you or the court of any exemptions under Wis. Stat. §§ 815.18(6) and 815.19, and consider whether the court has granted the exemptions.
- Read the notice of sale, including the case number, parties involved, terms listed on the notice, property location and address, and any other notices or announcements.
- Open bidding

- There is no set opening bid. Whoever makes a bid is subject to the requirements of the notice of sale. Unlike a foreclosure sale, where the creditor/bank sets an opening bid, there is no provision for this in Execution sales.
- If no one bids, note this on the paperwork and submit report to courts. Unsold property should be returned to the party you seized it from.
- The only people who cannot bid on the property are the sheriff or the deputy holding the sale.
- Accept and record bids until one party is the successful bidder.
- Evaluate whether the successful bidder meets the terms of the sale?
 - Most agencies require cash payment at time of sale or up to 4 hours after. These terms should be listed on the notice of sale and announced prior to the sale. Make sure you are aware of the requirements that were posted on the notice.
 - There can be issues with permitting the payment to be made within a certain time frame after the sale. What if they don't return? This also means you have to be present for the entire time frame to secure the property or make other arrangements.
 - If the successful bidder meets the terms of sale, announce a successful sale and release any other bidders for this property.
 - If bidder does not meet terms of sale "at the time of sale", declare the sale invalid and start the sale over. Note this on the sheriff's report of sale.
- Acceptance of the monies is handled the same as you would for a sheriff's foreclosure sale.

After the sale, the sheriff's report of sale should be completed by the plaintiff, signed by the sheriff, and filed with the clerk of courts. The sheriff's deed should be completed pursuant to Wis. Stat. § 815.38.⁹⁵

⁹⁵ 815.38 Execution, certificate of sale, recording.

(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.

(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.

Differences between Foreclosure and Execution of Real Property Sales		
	Foreclosure Sale	Execution Sale
Opening Bid	Plaintiff	Anyone
Down Payment	10 % (generally)	100% at time of sale
Confirmation of Sale Hearing	Shortly after sale	None – parties can petition for a hearing regarding disbursement of funds but there is not a confirmation of sale automatically held.
Redemption Period	None after sale date	12 months after sale date
Issuance of Sheriff's Deed	At Confirmation of sale	15 months after sale date
Buyer obtains Occupancy	At Confirmation of sale (Writ of assistance)	15 months after sale date when the buyer obtains sheriff's deed.
Writ of Assistance	Immediately after confirmation of sale	After Sheriff's deed is issued.

815.55 Execution sale; deed when to issue; limitation. If after the expiration of 15 months from the time of the sale of any real estate upon execution any part of the premises sold shall remain unredeemed, the sheriff of the county in which the real estate is situated shall, on demand, execute a deed for the unredeemed premises to the person entitled to the deed. The deed shall convey all of the right, title and interest which was sold upon the execution, except that no deed shall be issued after 20 years from the date of the sale.

815.56 Sheriff's deed; grantee if purchaser dead. If the person who would be entitled to a deed of real estate sold on execution dies before the delivery of that deed, the sheriff shall execute a deed to the decedent's personal representative who shall either hold the real estate in trust for the use of the heirs or devisees of the decedent, subject to the surviving spouse's right to elect under s. [861.02 \(1\)](#), or sell the real estate for the payment of debts in the same manner as lands owned by the decedent.

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.

EXECUTION AGAINST THE PERSON (CIVIL BENCH WARRANT)

A writ of execution against the person of the judgment debtor requires the officer to arrest the judgment debtor and hold them in the county jail until the judgment is paid or the debtor is discharged according to law.⁹⁶ Often, the bench warrant will provide options for resolution, which may include taking the judgment debtor into custody and holding them for a certain number of days, payment of the judgment amount, or completion of a financial disclosure form.

OTHER ISSUES

If the defendant or their attorney say they have filed papers to halt an action or have filed an appeal, they should be required to substantiate their claims by providing copies of the relevant paperwork. You may need to do some additional research before proceeding with any seizures.

If the plaintiff prevails in an appeal or in an action to halt, the plaintiff or their attorney must provide the sheriff with a new writ to execute.

If real estate has been attached and a judgment rendered, the execution may direct a sale of the defendant's interest in the real estate. See Wis. Stat. § 815.05(2). Upon a judgment to enforce a lien upon specific property, the execution shall direct the officer to

⁹⁶ If the execution is against the person of the judgment debtor, the execution shall require the officer to whom it is directed to arrest the judgment debtor and commit the judgment debtor to the county jail until the judgment debtor pays the judgment or is discharged according to law.

sell the interest that the defendant had in that specific property at the time the lien attached. See Wis. Stat. § 815.05(3).

HABEAS CORPUS

A writ of habeas corpus is a court order that directs a government official to produce a prisoner at a designated time and place so the court can determine whether the prisoner is legally in custody. Service may be made only by an elector of the state as follows:

- (1) By delivering a copy of the same to the person to whom it is directed.
- (2) If such person cannot be found, by being left 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.
- (3) If the person on whom the writ ought to be served hides or refuses admittance to the party attempting to serve the writ, by affixing the copy, in some conspicuous place on the outside of the house or other place where the prisoner is confined.
- (4) The person serving the writ shall make due and prompt return thereof with proof of service.

SALE OF UNCLAIMED PROPERTY

The process for disposing of unclaimed property is explained in Wis. Stat. § 171.06.⁹⁷ Once a judge or court commissioner issues an order requiring sale, the sheriff or constable

⁹⁷ **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

must give 60 days written notice of the time and place of the sale to the consignor, cosignee, and custodian of the property. The notice can be served in person or by mail. If the name or residence of any of those persons is unknown and cannot be determined with reasonable diligence, the statute requires publication of an affidavit as a class 3 notice under the procedures outlined in Wis. Stat. ch. 985.

MANDAMUS AND PROHIBITION

A writ of mandamus⁹⁸ is an order issued by a court directing that a public officer perform his or her prescribed duties.⁹⁹ A writ or order of mandamus is an extraordinary court order because it is made without the benefit of full judicial process, or before a case has concluded. It may be issued by a court at any time that it is appropriate, but it is usually issued in a case that has already begun.

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.**

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.

Wis. Stat. § 171.06

⁹⁸ **Mandamus, return to first writ.** Mandamus is a civil action. The writ of mandamus shall specify the time within which the defendant shall make return thereto. Before such time expires the defendant may move to quash the writ and such motion shall be deemed a motion to dismiss the complaint under s. 802.06 (2).

Wis. Stat. § 783.01

⁹⁹ See *Voces De La Frontera, Inc. v. Clarke*, 2017 WI 16, ¶11, 373 Wis. 2d 348, 891 N.W.2d 803.

SPECIAL SITUATIONS AND STATUTES

This chapter contains statutes that may be relevant to special situations.

SEARCH WARRANTS

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.

968.15 Search warrants; when executable.

- (1) A search warrant must be executed and returned not more than 5 days after the date of issuance.
- (2) Any search warrant not executed within the time provided in sub. (1) shall be void and shall be returned to the judge issuing it.

968.17 Return of search warrant.

- (1) The return of the search warrant shall be made within 48 hours after execution to the clerk designated in the warrant. The return shall be accompanied by a written inventory of any property taken. Upon request, the clerk shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the search warrant.
- (2) An affidavit or complaint made in support of the issuance of the warrant and the transcript of any testimony taken shall be filed with the clerk within 5 days after the date of the execution of any search warrant.

RESISTING OR OBSTRUCTING AN OFFICER

946.41 Resisting or obstructing officer.

- (1) Except as provided in subs. [\(2m\)](#) and [\(2r\)](#), whoever knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority is guilty of a Class A misdemeanor.
- (2) In this section:

(a) "Obstructs" includes without limitation knowingly giving false information to the officer or knowingly placing physical evidence with intent to mislead the officer in the performance of his or her duty including the service of any summons or civil process.

(b) "Officer" means a peace officer or other public officer or public employee having the authority by virtue of the officer's or employee's office or employment to take another into custody.

(c) "Soft tissue injury" means an injury that requires medical attention to a tissue that connects, supports, or surrounds other structures and organs of the body and includes tendons, ligaments, fascia, skin, fibrous tissues, fat, synovial membranes, muscles, nerves, and blood vessels.

(2m) Whoever violates sub. [\(1\)](#) under all of the following circumstances is guilty of a Class H felony:

(a) The violator gives false information or places physical evidence with intent to mislead an officer.

(b) At a criminal trial, the trier of fact considers the false information or physical evidence.

(c) The trial results in the conviction of an innocent person.

(2r) Whoever violates sub. [\(1\)](#) and causes substantial bodily harm or a soft tissue injury to an officer is guilty of a Class H felony.

(2t) Whoever violates sub. [\(1\)](#) and causes great bodily harm to an officer is guilty of a Class G felony.

(3) Whoever by violating this section 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 by reason thereof.

The state must prove that the accused knew that the officer was acting in an official capacity and knew that the officer was acting with lawful authority when the accused allegedly resisted or obstructed the officer. *State v. Lossman*, 118 Wis. 2d 526, 348 N.W.2d 159 (1984).

Knowingly providing false information with intent to mislead is obstruction as a matter of law. *State v. Caldwell*, 154 Wis. 2d 683, 454 N.W.2d 13 (Ct. App. 1990).

No law allows officers to arrest for obstruction on a person's refusal to give his or her name. Mere silence is insufficient to constitute obstruction. *Henes v. Morrissey*, 194 Wis. 2d 339, 533 N.W.2d 802 (1995).

Fleeing and hiding from an officer may constitute obstructing. *State v. Grobstick*, 200 Wis. 2d 242, 546 N.W.2d 187 (1996)

There is no exculpatory denial exception under this section. The statute criminalizes all false statements knowingly made and with intent to mislead the police. The state should have sound reasons for believing that a defendant knowingly made false statements with intent to mislead the police and not out of a good-faith attempt to defend against accusations of a crime. The latter can never include the former. *State v. Reed*, 2005 WI 53, 280 Wis. 2d 68, 695 N.W.2d 315.

"Lawful authority," as that term is used in sub. (1), requires that police conduct be in compliance with both the federal and state constitutions, in addition to any applicable statutes. *State v. Ferguson*, 2009 WI 50, 317 Wis. 2d 586, 767 N.W.2d 187.

TRANSFER OF ENCUMBERED PROPERTY

943.84 Transfer of encumbered property.

(1) Whoever, with intent to defraud, conveys real property which he or she knows is encumbered, without informing the grantee of the existence of the encumbrance may be penalized as provided in s. 943.91.

(2) Whoever, with intent to defraud, does any of the following may be penalized as provided in s. 943.91:

(a) Conceals, removes or transfers any personal property in which he or she knows another has a security interest; or

(b) In violation of the security agreement, fails or refuses to pay over to the secured party the proceeds from the sale of property subject to a security interest.

(3) It is prima facie evidence of an intent to defraud within the meaning of sub. (2) (a) if a person, with knowledge that the security interest exists, removes or sells the property without either the consent of the secured party or authorization by the security agreement and fails within 72 hours after service of written demand for the return of the property either to return it or, in the event that return is not possible, to make full disclosure to the secured party of all the information the person has concerning its disposition, location and possession.

(4) In this section “security interest” means an interest in property which secures payment or other performance of an obligation; “security agreement” means the agreement creating the security interest; “secured party” means the person designated in the security agreement as the person in whose favor there is a security interest or, in the case of an assignment of which the debtor has been notified, the assignee.

(5) In prosecutions for violation of sub. (2) arising out of transfers of livestock subject to a security agreement in violation of the terms of the security agreement, evidence that the debtor who transferred the livestock signed or endorsed any writing arising from the transaction, including a check or draft, which states that the transfer of the livestock is permitted by the secured party establishes a rebuttable presumption of intent to defraud.

It is not necessary that a security interest be perfected by filing to support a conviction under this section. *State v. Tew*, 54 Wis. 2d 361, 195 N.W.2d 615 (1972).

“Removal” under sub. (2) (a) refers to a permanent change in situs, not necessarily across state lines. A showing of diligence by the secured party in seeking the secured property is not required. *Jameson v. State*, 74 Wis. 2d 176, 246 N.W.2d 501 (1976).

Sub. (1) is not unconstitutionally vague. Liens were effective as encumbrances on the date work was performed or materials supplied. *State v. Lunz*, 86 Wis. 2d 695, 273 N.W.2d 767 (1979).

THEFT

943.20 Theft.

(1) Acts. Whoever does any of the following may be penalized as provided in sub. (3):

(a) Intentionally takes and carries away, uses, transfers, conceals, or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of such property.

(b) By virtue of his or her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his or her authority, and with intent to convert to his or her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his or her possession or custody by virtue of his or her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his or her own use within the meaning of this paragraph.

(c) Having a legal interest in movable property, intentionally and without consent, takes such property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of such property.

(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.

(e) Intentionally fails to return any personal property which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement after the lease or

rental agreement has expired. This paragraph does not apply to a person who returns personal property, except a motor vehicle, which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement, within 10 days after the lease or rental agreement expires.

APPENDIX A: GLOSSARY OF KEY TERMS

Affidavit: A form that is signed and notarized by a notary public.

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

Authenticated Copy: Duplicate verified to be a true and faithful copy of an original by an authorized signatory such as a notary public

Certificate: A form, signed by a person, indicating service was made as described.

Certified Copy: A photocopy of a document, judgment, or record that is signed and attested to as an accurate and a complete reproduction of the original document by a public official in whose custody the original has been placed for safekeeping.

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 judgment, 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 claims 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.

Habeas 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 \$10,000.

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 \$10,000 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 judgment for costs.

APPENDIX B: TIME REQUIREMENTS FOR KEY ACTIONS

TIME REQUIREMENTS FOR KEY ACTIONS				
A * means you should not count weekends or legal holidays in the time calculation. Do not count the last day if the last day is a day when the clerk of courts is closed.				
Paper	Statute	Timing	Event	Remarks
Eviction summons	799.05(3)(b)	5 days*	Court date	The return date shall not be less than 5 working days or more than 25 days from the issue date. The paper must be served not less than 5 working days before the return date.
	799.16(3)	5 days* (mail) <u>and</u> 7 days (posting)	Court date	If unable to serve as above after due diligence. The paper can be posted on the premises at least 7 days before the court date, with a copy mailed to the last known address at least 5 days before the court date. You may need to obtain a new court date.
Notice of mortgage foreclosure	815.31	3 weeks/21 days	Prior to Sale	Sale shall be advertised by posting at least three weeks prior to the date of sale.
Notice of sale of personal property	815.29	20 days	Prior to Sale	Sale shall be advertised by posting at least 20 days before the date of sale.
Garnishment summons	812.07 812.35(2)(3)(4)	See notes		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)	90 days	Filing with courts	Paper must be served within ninety days of filing with the clerk of courts.
Replevin Summons	799.05	8 days*	Return or Court date	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 or more than thirty days from the issue date.
	801.02	90 days	Filing with courts	Replevin in a large claims action – Paper must be served within ninety days of filing.
Restraining Orders Injunctions	813.12	48 hours unless specified	Hearing	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)	8 days*	Court date	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	60 days	Issuance to return	Writ may be obtained any time after the Confirmation of Sale hearing and is valid for 60 days after issuance

TIME REQUIREMENTS FOR KEY ACTIONS				
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Paper	Statute	Timing	Event	Remarks
Writ of Restitution	799.45	10 days*	Receipt by Sheriff	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.
Subpoena	885.03 885.06	None unless specified		Unless otherwise specified, they may be served up to the time of the hearing.
Order to Appear before Court Commissioner		48 hours	Hearing	Unless otherwise specified, this must be served forty eight hours prior to the hearing.
Motion and Order for Hearing on Contempt		5 days*	Court Date	Must be served five working days prior to the court date.
Writ of Attachment	811	10 days*	Receipt by Sheriff	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	none		No time limit, only a notice. Personal or Substitute service after 3 attempts. If unable to serve, post on door AND mail a copy by regular mail to last known address.
Action in Enforce Judgment of Child Support	767.813(3)	Check Document		Serve within time limits listed on the documents.
Notice of Appointment of Guardian	54.38(2) 55.09	10 days*	Hearing	Must be served ten days prior to hearing
Notices - Probate related	Chapter 859, 865, 879	See paper		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)	5 days	Execution of warrant	Must be executed within five days of the date of issue, this includes holidays and weekends.
	968.17	48 hours *	Return to the courts	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	Reasonable time		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)	Check the paper	Court Date	Service on persons shall be made pursuant to the actual summons issued by the District Attorney or Courts.
	968.05(2)	10 days*	Court Date	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)	5 days *	Court Date	Personal service no less than 5 working days prior to court date.
Summons and Petition (Family)	Chapter 767 801.15(4)	5 days *	Court Date	Personal service no less than 5 working days prior to court date.
Order to Appear (Family)	Chapter 767	24 hours in county 72 hours outside of the county where court is held	Hearing	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.

TIME REQUIREMENTS FOR KEY ACTIONS

A * means you should not count weekends or legal holidays in the time calculation.
Do not count the last day if the last day is a day when the clerk of courts is closed.

Paper	Statute	Timing	Event	Remarks
Notice of Motion (Family)	Chapter 767 801.15(4)	5 days *	Court Date	Personal service no less than 5 working days prior to court date.
Termination of Parental Rights	48.42(4)(a)	7 days *	Court Date	Personal Service no less than 7 working days prior to court date.
Summons – Divorce Proceeding	801.095	None for service		Personal Service with 20 days to provide a response to the courts.
Writ of Execution – Execution against property	Chapter 815	60 days	Date of issuance	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.