

TITLE 11
ENFORCEMENT OF JUDGMENTS IN CIVIL ACTIONS

CHAPTER 3
LEVY AND SALE UNDER EXECUTION

11-301. EXECUTION OF WRIT. The sheriff must execute the writ against the property of the judgment debtor by levying on a sufficient amount of property if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

The provisions of sections [11-703](#), [11-706](#), [11-707](#), [11-709](#) and [11-710](#), Idaho Code, shall apply to a levy upon personal property.

[(11-301) C.C.P. 1881, sec. 441; R.S., R.C., & C.L., sec. 4481; C.S., sec. 6921; I.C.A., sec. 8-301; am. 1991, ch. 165, sec. 12, p. 405; am. 2017, ch. 303, sec. 7, p. 802.]

11-302. SALE OF PROPERTY -- NOTICE. Before the sale of the property on execution, notice thereof must be given as follows:

1. In case of perishable property, by posting a written notice of the time and place of sale in three (3) public places of the precinct or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

2. In case of other personal property, by posting a similar notice in three (3) public places in the precinct or city where the sale is to take place for not less than five (5) nor more than ten (10) days before the time set for the sale, or by publishing a copy thereof at least one (1) week, and not more than two (2) weeks, in a newspaper published in the county, if there be one.

3. In case of real property, by posting a similar notice particularly describing the property, for twenty (20) days, in three (3) public places in the precinct or city where the property is situated, and also where the property is to be sold, and by publishing a copy thereof once a week for the same period before the time set for the sale, in a newspaper published in the county, if there be one. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

[(11-302) C.C.P. 1881, sec. 442; R.S., sec. 4482; am. 1895, p. 40, sec. 1; reen. 1899, p. 243, sec. 1; am. 1901, p. 156, sec. 1; am. 1907, p. 30, sec. 1; reen. R.C. & C.L., sec. 4482; C.S., sec. 6922; I.C.A., sec. 8-302.]

11-303. SALE WITHOUT NOTICE -- PENALTY. An officer selling without the notice prescribed by the last section forfeits \$500 to the aggrieved party,

in addition to his actual damages; and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale) forfeits \$500.

[(11-303) C.C.P. 1881, sec. 443; R.S., R.C., & C.L., sec. 4483; C.S., sec. 6923; I.C.A., sec. 8-303.]

11-304. CONDUCT OF SALE. All sales of property under execution must be made at auction, to the highest bidder. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser, or be interested in any purchase, at such sale. When the sale is of personal property, capable of manual delivery, it must be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the sheriff must follow such directions.

[(11-304) C.C.P. 1881, sec. 444; R.S., R.C., & C.L., sec. 4484; C.S., sec. 6924; I.C.A., sec. 8-304; am. 2018, ch. 121, sec. 1, p. 258.]

11-305. REFUSAL TO PAY PURCHASE-MONEY -- RESALE. If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

[(11-305) C.C.P. 1881, sec. 445; R.S., R.C., & C.L., sec. 4485; C.S., sec. 6925; I.C.A., sec. 8-305.]

11-306. REFUSAL TO PAY PURCHASE-MONEY -- REJECTION OF SUBSEQUENT BIDS. When a purchaser refuses to pay the officer may, in his discretion, thereafter reject any subsequent bid of such person.

[(11-306) C.C.P. 1881, sec. 446; R.S., R.C., & C.L., sec. 4486; C.S., sec. 6926; I.C.A., sec. 8-306.]

11-307. LIMITATION OF OFFICER'S LIABILITY. The two (2) preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

[(11-307) C.C.P. 1881, sec. 447; R.S., R.C., & C.L., sec. 4487; C.S., sec. 6927; I.C.A., sec. 8-307.]

11-308. DELIVERY OF PROPERTY TO PURCHASER -- CERTIFICATE OF SALE. When the purchaser of any personal property capable of manual delivery pays the purchase-money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of

the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

[(11-308) C.C.P. 1881, sec. 448; R.S., R.C., & C.L., sec. 4488; C.S., sec. 6928; I.C.A., sec. 8-308.]

11-309. CERTIFICATE OF SALE -- TITLE CONVEYED. When the purchaser of any personal property not capable of manual delivery pays the purchase-money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

[(11-309) C.C.P. 1881, sec. 449; R.S., R.C., & C.L., sec. 4489; C.S., sec. 6929; I.C.A., sec. 8-309.]

11-310. TITLE TO REAL PROPERTY -- RIGHT OF REDEMPTION -- CERTIFICATE OF SALE. Upon a sale of real property the purchaser is substituted to, and acquires all the right, title, interest and claim of the judgment debtor thereto; and all his right, title, interest and claim thereto at any time during any subsisting lien thereon by attachment in the action, or by the docketing of the judgment. When the estate is less than a leasehold of two (2) years' unexpired term, the sale is absolute. In all other cases the property is subject to redemption, as provided in the next chapter. The officer must give to the purchaser a certificate of sale containing:

1. A particular description of the real property sold.
2. The price bid for each distinct lot or parcel.
3. The whole price paid.
4. When subject to redemption, it must be so stated. And when the judgment, under which the sale has been made, is made payable in a specified kind of money or currency, the certificate must also show the kind of money or currency in which such redemption may be made, which must be the same as that specified in the judgment. A duplicate of such certificate must be filed for record by the officer in the office of the recorder of the county.

[(11-310) C.C.P. 1881, sec. 450; R.S., R.C., & C.L., sec. 4490; C.S., sec. 6930; I.C.A., sec. 8-310.]

11-311. EXECUTION OF DEED BY SUCCESSOR IN OFFICE. When the sheriff who has sold any real estate shall die, resign, be removed from office, or his term of office expire, before executing any good and sufficient deed for such real estate, such deed may be executed by the successor in office of such sheriff with the same effect to all intents and purposes as if made by the sheriff making the sale.

[(11-311) 1895, p. 20, sec. 1; reen. 1899, p. 235, sec. 1; reen. R.C. & C.L., sec. 4490a; C.S., sec. 6931; I.C.A., sec. 8-311.]

11-312. FAILURE OF TITLE -- REVIVAL OF JUDGMENT. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of

property at sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof, must, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

[(11-312) C.C.P. 1881, sec. 458; R.S., R.C., & C.L., sec. 4498; C.S., sec. 6939; I.C.A., sec. 8-312.]

11-313. CONTRIBUTION BETWEEN JOINT DEBTORS. When upon an execution against several persons more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case the person so paying or contributing is entitled to the benefit of the judgment to enforce contribution or repayment, if, within ten (10) days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice the clerk must make an entry thereof in the margin of the docket.

[(11-313) C.C.P. 1881, sec. 459; R.S., R.C., & C.L., sec. 4499; C.S., sec. 6940; I.C.A., sec. 8-313.]