

## **CHAPTER 32-20 FORECLOSURE OF LIENS ON PERSONAL PROPERTY**

### **32-20-01. Foreclosure authorized.**

An action may be maintained in the district court to foreclose any lien upon personal property.

### **32-20-02. Warrant to seize property - Issuance - Service.**

If the plaintiff is not in possession of the property, the judge of the court in which the action is commenced, at the time of the commencement of the action or at any time before judgment, may issue a warrant commanding the sheriff to seize and safely keep the same to abide the final judgment in the action. The warrant may be issued upon the filing of:

1. A verified complaint setting forth a claim for relief in favor of the plaintiff and against the defendant for the foreclosure of a lien upon the property possession of which is sought to be obtained; and
2. An affidavit stating that the affiant knows or has good reason to believe that the seizure of the property is necessary to prevent removal, destruction, or concealment of the property or loss of the creditor's proprietary interests therein.

The sheriff shall without delay serve copies of the warrant, affidavit, and undertaking upon the defendant in the same manner as the summons. If the defendant has not filed a special answer, pursuant to this chapter, within ten days after notice of the issuance of a warrant or if in the trial of the special answer the court finds for the plaintiff, the sheriff shall seize the property of the defendant. The sheriff shall attach perishable property or property the judge has determined, when issuing a warrant, is likely to be removed, destroyed, or concealed if the property is not attached without delay, notwithstanding the right of the defendant to file a special answer.

### **32-20-03. Form of warrant.**

Repealed by S.L. 1985, ch. 378, § 5.

### **32-20-04. Undertaking.**

Before issuing the warrant, the clerk must require a written undertaking on the part of the plaintiff with sufficient surety to the effect that if the defendant recovers judgment the plaintiff will pay all costs that may be awarded to the defendant, and all damages which the defendant may sustain by reason of any seizure under the warrant, not exceeding the sum named in the undertaking, which must be at least the amount claimed in the complaint and in no case less than one hundred dollars.

#### **32-20-04.1. Special answer to warrant - Trial.**

Within ten days after notice of the issuing of a warrant to seize the defendant's property, the defendant may, by special answer, deny the existence, at the time of the making of the affidavit, of the material facts stated therein, and may assert undue hardship as a defense. The issue so raised must be tried by the court before the trial of the action, and the burden of proof is upon the plaintiff. If the defendant has made an assignment for the benefit of the defendant's creditors, the defendant's assignee may answer and defend pursuant to this section.

#### **32-20-04.2. Trial of special answer.**

In making its determination of the issue raised by the special answer, the court shall consider any undue hardship on the defendant that would result from an issuance of the warrant. If the court finds for the defendant, the judge shall tax the defendant's costs of such trial, and shall enter an order dismissing the warrant or that the property attached be delivered to the defendant; and the jury or the court shall, on the trial of the action or thereafter, assess the damages sustained by the defendant by reason of the taking and detention or sale of the property attached or by reason of any injury thereto. The same, together with the costs so taxed, must be a setoff to the plaintiff's demand, and if in excess of it, or the plaintiff fails to recover, the defendant shall have judgment for the amount due. If the court on the trial of such

special issue finds for the plaintiff, the judge shall tax the plaintiff's costs of such trial, and the amount so taxed must, if the plaintiff recovers, be taxed by the clerk as disbursement in the action. If the defendant or the defendant's assignee recovers judgment in the action, said costs and the judgment must be offset.

**32-20-05. What judgment must state.**

In an action for the foreclosure of a lien on personal property, judgment in favor of the plaintiff must specify the amount due on the lien and must direct a sale of the property to satisfy the same and the costs, by a person appointed thereby, or by an officer designated therein, in the manner provided for the sale of personal property under execution, and the application by the person or officer of the proceeds of the sale, less the person's or officer's fees and expenses, to the payment of the judgment and costs. It also may provide for the payment of the surplus to the owner of the chattel and for the safekeeping of the surplus, if necessary, until it is claimed by the owner. If the defendant upon whom the summons is served personally is liable for the amount of the lien, or for any part thereof, judgment may be entered against the defendant accordingly. A judgment for either the defendant or plaintiff must specify any amounts awarded pursuant to section 32-20-04.2.

**32-20-06. Certain provisions relating to attachments applicable.**

The provisions of the chapter on attachment in this title relative to rebonding, the sale of perishable property, and proceedings in case judgment is in favor of the defendant shall apply to proceedings under this chapter so far as the same are applicable.

**32-20-07. Property must be subject to jurisdiction of court.**

In all cases of foreclosure of chattel liens of any kind, foreclosure will be ordered only upon proof that the property or some part thereof is in existence, subject to execution, and within the jurisdiction of the court.

**32-20-08. Other remedies not affected.**

This chapter does not affect any right or remedy to foreclose or otherwise enforce or satisfy a lien upon or security interest in personal property without action as prescribed in sections 41-09-98 through 41-09-123.