

§ 1964. Constructive notice of pending actions

Where the law of a State requires a notice of an action concerning real property pending in a court of the State to be registered, recorded, docketed, or indexed in a particular manner, or in a certain office or county or parish in order to give constructive notice of the action as it relates to the real property, and such law authorizes a notice of an action concerning real property pending in a United States district court to be registered, recorded, docketed, or indexed in the same manner, or in the same place, those requirements of the State law must be complied with in order to give constructive notice of such an action pending in a United States district court as it relates to real property in such State.

(Added Pub. L. 85-689, §1(a), Aug. 20, 1958, 72 Stat. 683.)

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Pub. L. 85-689, §2, Aug. 20, 1958, 72 Stat. 683, provided that: "The amendments made by this Act [enacting this section] shall only be effective with respect to actions commenced in United States district courts more than one hundred and eighty days after the date of enactment of this Act [Aug. 20, 1958]."

CHAPTER 127—EXECUTIONS AND JUDICIAL SALES

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§ 2001. Sale of realty generally

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the

best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

(c) This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 958; May 24, 1949, ch. 139, §99, 63 Stat. 104.)

HISTORICAL AND REVISION NOTES**1948 ACT**

Based on title 28, U.S.C., 1940 ed., §847 (Mar. 3, 1893, ch. 225, §1, 27 Stat. 751; June 19, 1934, ch. 662, 48 Stat. 1119; Apr. 24, 1935, ch. 77, §1, 49 Stat. 159; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

The term "court of the United States" is defined in section 451 of this title.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in subsection (a) of section 2001 of title 28, U.S.C.

Editorial Notes**AMENDMENTS**

1949—Subsec. (a). Act May 24, 1949, corrected spelling of "ancillary" in second par.

§ 2002. Notice of sale of realty

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 959; May 24, 1949, ch. 139, §100, 63 Stat. 104.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 849 (Mar. 3, 1893, ch. 225, § 3, 27 Stat. 751; Apr. 24, 1935, ch. 77, § 3, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

Word “under” was substituted for “ordered pursuant to section 847 of this title by” after “A public sale of realty or interest therein”.

Sections 847 and 848, of title 28, U.S.C., 1940 ed., now sections 2001 and 2004 of this title, relate only to sales under orders or decrees, without any reference to sales under judgments. In 1921 the Supreme Court held, in *Yazoo & M. V. R. Co. v. City of Clarksdale*, 1921, 42 S.Ct. 27, 257 U.S. 10, 66 L.Ed. 104, that such section 847 did not apply to sales under common law executions. At that time such section 849 of title 28, U.S.C., 1940 ed., read as it has been revised above, without any reference to such section 847. However, in 1935, such sections 847, 848 and 849 were amended by one act, ch. 77, 49 Stat. 159, and, in such section 849, the words “pursuant to the provisions of this Act” were inserted, but the word “judgment,” though retained in such section 849, was not inserted in such sections 847 and 848. It is probable that Congress did not intend, in 1935 to make such sections 847 and 848 applicable to sales under judgments in law actions. Hence, to make all three sections consistent, the above-mentioned substitution was made.

Reference to circuit was deleted from first and second paragraphs as unnecessary and inappropriate. Publication in a newspaper in a large circuit remote from the county in which the realty is situate, might be wholly insufficient to give notice to interested parties.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2002 of title 28, U.S.C.

Editorial Notes

AMENDMENTS

1949—Act May 24, 1949, substituted “11” for “II” after “Title” in third par.

§ 2003. Marshal’s incapacity after levy on or sale of realty

Whenever a United States marshal dies, is removed from office, or the term of his commission expires, after levying on realty or any interest therein under a writ of execution issued by a court of the United States, and before sale or other final disposition thereof, like process shall issue to the succeeding marshal and the same proceedings shall be had as if such contingency had not occurred.

Whenever any such contingency arises after a marshal has sold any realty or interest therein and before a deed is executed, the court may, on application by the purchaser, or the plaintiff in whose action the sale was made, setting forth the facts of the case and the reason why the title was not perfected by such marshal, order the succeeding marshal to perfect the title and execute a deed to the purchaser, upon payment of the purchase money and unpaid costs.

(June 25, 1948, ch. 646, 62 Stat. 959; May 24, 1949, ch. 139, § 101, 63 Stat. 104.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 850 (R.S. § 994).

Word “realty” was substituted for “lands, tenements, or hereditaments” in two places, the two terms being synonymous. (See Black’s Law Dictionary, 3d Ed., p. 1969.)

Word “action” was substituted for “suit”, in view of Rule 2 of the Federal Rules of Civil Procedure, prescribing but one form of action.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2003 of title 28, U.S.C.

Editorial Notes

AMENDMENTS

1949—Act May 24, 1949, corrected spelling of “realty” in first par.

§ 2004. Sale of personalty generally

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 959.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 848 (Mar. 3, 1893, ch. 225, § 2, 27 Stat. 751; Apr. 24, 1935, ch. 77, § 2, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

Changes were made in phraseology.

§ 2005. Appraisal of goods taken on execution

Whenever State law requires that goods taken on execution be appraised before sale, goods taken under execution issued from a court of the United States shall be appraised in like manner.

The United States marshal shall summon the appraisers in the same manner as the sheriff is required to summon appraisers under State law.

If the appraisers fail to attend and perform their required duties, the marshal may sell the goods without an appraisal. Appraisers attending and performing their duties, shall receive the fees allowed for appraisals under State law.

(June 25, 1948, ch. 646, 62 Stat. 959.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 846 (R.S. § 993).

Words “shall be appraised in like manner” were substituted for “the appraisers appointed under the authority of the State may appraise goods taken in execution on a fieri facias issued out of any court of the United States”. The change precludes construction that the State appraisers only are available to appraise such goods in civil actions in the federal courts.

Changes were made in phraseology.

§ 2006. Execution against revenue officer

Execution shall not issue against a collector or other revenue officer on a final judgment in any proceeding against him for any of his acts, or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that: