

# Execution of judgment

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Execution shall issue as a matter of right, on motion by the winning party with notice to the adverse party, upon a judgment or order that disposes of the action or proceeding, upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

**Execution may be applied for in the** (1) court of origin, or (2) in the appellate court which can direct the court of origin to issue the writ.

**Execution pending appeal (discretionary execution)** - may be obtained before the expiry of the period to appeal from the trial court while it still has jurisdiction and possession of the original records or the record on appeal. If the trial court has already lost jurisdiction over the case, the motion for execution may be filed in the appellate court.

**How to enforce a writ of execution-** judgments are enforceable by motion within five years from date of entry of the judgment (which is auto-

matically the date of finality of the judgment) and thereafter by a court action within another period of five (5) years.

**Specifying amounts** - the motion for execution and the writ of execution should state specifically not only the principal amount, but also the amount of the interest, costs, damages, rents or profits due as of the date of the issuance of the writ of execution.

**Payment shall be made directly to the judgment obligee, or in his absence, to the executing sheriff who shall turn over the amount within the same day to the clerk of court, or to the nearest government bank. The sheriff cannot demand that the check be made payable to him.**



## **Procedure in executing a money judgment**

**1.** A demand should be made first by the sheriff on the judgment obligor for immediate payment of the full amount and all lawful fees.

**2.** If the obligor does not comply with the demand, he can choose which property may be levied upon. If the obligor does not do so, levy shall first be made on his personal properties before his real properties.

**3.** The sheriff may garnish debts due the judgment obligor and other credits and other personal property not capable of manual delivery, including bank deposits. The garnished amount in cash or certified check should be issued in the name of the judgment obligee and delivered directly to him within ten working days from notice on the garnishee requiring delivery.

**Lifetime of a writ of execution** - formerly, the writ was valid for only sixty days, but now the sheriff has to make a report every thirty (30) days until the full satisfaction of the judgment.

**A writ of execution may be quashed or set aside** if it has been improvidently issued; it is defective in substance; it has been issued against the wrong party; the judgment debt has been paid; the writ has been issued without authority; there has been a change in the situation of the parties which makes execution inequitable; or the judgment had become functus officio; when the order of execution varies the tenor of the judgment, etc.

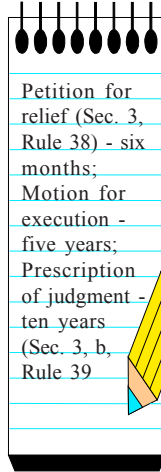


**In ejectment cases (forcible entry or unlawful detainer),**

execution shall issue immediately against the defendant in order to prevent damages to the plaintiff arising from his loss of the possession of the property.

**Requisites to stay (or stop) immediate execution**

1. Perfecting an appeal within fifteen (15) days from notice of the judgment and payment of the appeal docket fee
2. Filing a super-seedeas bond (to answer for the rents, damages and costs of the plaintiff)
3. Paying promptly either to the plaintiff, or making a periodic deposit with the court of the back rentals or reasonable compensation for use and occupation of the property during the pendency of the appeal. If such payments or periodic deposits are not made, execution pending appeal may be asked for.



manner disturbs the possession of the winning party, he may be charged with contempt of court.

4. If the defendant-lessee refuses to vacate the property and to remove his improvements, the winning party-lessor should file a petition for the issuance of a special order to destroy, demolish, or remove the improvements on the property. The special order may only be issued after due hearing and upon a reasonable time to be fixed by the court.

**How execution in ejectment cases is carried out**

1. Defendant is given notice of the writ and asked to comply with such within a reasonable period, normally from three to five days, and it is only after such period that the sheriff enforces the writ by the bodily removal of the defendant and his personal belonging.
2. The sheriff may employ force necessary to enable him to enter the house and enforce the judgment.
3. If the defendant re-enters the property or in any

5. The demolition order must be carried out in a manner consistent with justice and good faith. If the sheriff and the plaintiff indiscriminately demolish the house and building and destroy personal properties of the occupants, they can be charged with a damage suit.

