



## Maricopa County, Arizona, Sheriff's Bidding Requirements at a Sheriff's Execution Sale of a Judgment Debtor's "Homestead" Residence

By Larry O. Folks • September 2020

### Relevant Background Facts

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Judgment Creditor obtains a money judgment ("Judgment") against an individual Judgment Debtor. The Judgment is recorded with the Maricopa County Recorder ("County Recorder") while Judgment Debtor owns a residence located in Maricopa County that is the Judgment Debtor's "homestead" residence ("Homestead Residence").<sup>1</sup>

Judgment Creditor obtains a Writ of General Execution from the Clerk of the Superior Court to direct the Sheriff of Maricopa County, Arizona ("Sheriff"), to schedule a Sheriff's execution sale of the Homestead Residence. The Writ of General Execution is delivered to the Civil Enforcement Division of the Sheriff's Department along with an initial \$200 fee deposit. The Sheriff will schedule an execution sale of the Homestead Residence to enforce the Judgment only if all of the legal requirements discussed below are satisfied ("Sheriff's Execution Sale").

The Sheriff's Execution Sale of the Judgment Debtor's Homestead Residence will be scheduled by the Sheriff after:

- it is determined that the legal requirement of A.R.S. § 33-1105(A) is met, that the value of the Homestead Residence exceeds the total of any senior liens upon the property plus the \$150,000 statutory homestead exemption amount due to the Judgment Debtor pursuant to A.R.S. § 33-1101(A) (the "Homestead Exemption Amount");
- the Sheriff makes demand upon the Judgment Debtor to pay the Judgment, and the Judgment Debtor fails to pay the Judgment balance; and

- the Sheriff determines that the Judgment balance cannot be collected by selling the Judgment Debtor's personal property.

The Sheriff initially enforces the Writ of General Execution by recording it with the Maricopa County Recorder as the act of levying upon the property. In addition, the Sheriff must publish the Notice of Sale for three weeks prior to the date of sale and post the Notice of Sale at three designated public places at least 15 days prior to the date of the Sheriff's Execution Sale. The Sheriff will mail a copy of the Notice of Sale to the Judgment Creditor well in advance of the Sheriff's Execution Sale date.

### The Sheriff's Bidding Requirements Imposed Upon the Judgment Creditor at the Sheriff's Sale of the Residence

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#### LEGAL ANALYSIS

The Arizona statute, which includes the conditions that must be complied with before the Sheriff will even schedule a Sheriff's Execution Sale of a Homestead Residence, is set forth in full below:

#### **33-1105. Sale by judgment creditor of property subject to homestead exemption**

A judgment creditor other than a mortgagee or beneficiary under a trust deed may elect to sell by judicial sale as specified in title 12 the property in which the judgment debtor has a homestead under section 33-1101, subsection A, provided that the judgment debtor's interest in the property shall exceed the sum of the judgment debtor's homestead plus the amount of any consensual liens on the

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<sup>1</sup>The requirements for real property to qualify as a Judgment Debtor's "homestead" property and for the \$150,000 homestead exemption to apply are set forth at A.R.S. § 33-1101 *et. seq.*

property having priority to the judgment. A bid shall not be accepted by the officer in charge of a sale under this section which does not exceed the amount of the judgment debtor's homestead plus the amount of any consensual liens on the property having a priority to the judgment plus the costs of the sale allowable under title 12. After receipt of a sufficient bid, the officer shall sell the property. From the proceeds, the officer shall first pay the amount of the homestead to the judgment debtor plus the amount of any consensual liens on the property having a priority to the judgment and then pay the costs of the sale. The remaining proceeds shall be applied in accordance with the provisions of section 12-1562, subsection A.

The Sheriff's interpretation and implementation of the A.R.S. § 33-1105 to schedule a Sheriff's Execution Sale of a Homestead Residence and accept a Judgment Creditor's bid is set forth below:

- In advance of the Sheriff's Execution Sale date, the Judgment Creditor must provide the Sheriff with the dollar amount of unpaid real property taxes upon the Homestead Property to be paid to the Maricopa County Treasurer upon completion of the sale good through two (2) weeks and one (1) day after the scheduled date of the Sheriff's Execution Sale ("Senior Real Property Tax Lien Amount").
- In advance of the Sheriff's Execution Sale date, the Judgment Creditor must provide the Sheriff with payoff amounts of all Deeds of Trust and other liens of record senior upon the Homestead Property that are senior to the money Judgment being enforced good through two (2) weeks and one (1) day after the scheduled date of the Sheriff's Execution Sale (the "Senior Lien Payoff Amount").
- The Judgment Creditor is required by the Sheriff to bid \$1.00 over the total amount of the Senior Real Property Tax Lien Amount + the Senior Lien Payoff Amount + the \$150,000 Homestead Exemption Amount as its opening credit bid at the Sheriff's Execution Sale.<sup>2</sup>

The Judgment Creditor must have a representative physically present at the Sheriff's office to attend the Sheriff's Execution Sale, which is a public auction. The representative must fully understand the bidding process and make the

Judgment Creditor's opening credit bid and any additional higher bids during the auction sale.

At the beginning of the public auction Sheriff's Execution Sale, the Sheriff will announce the total judgment principal amount, interest accrued upon the judgment amount until the date of sale, and the Sheriff's sale commission and other hard costs. This is known as the Judgment, Interest and Costs ("JIC") announced amount for informational purposes.

For a Homestead Residence execution sale, the actually bidding begins at \$1.00 over the total amount of the Senior Real Property Tax Lien Amount + the Senior Lien Payoff Amount + the \$150,000 Homestead Exemption Amount as the Judgment Creditor's opening credit bid at the Sheriff's Execution Sale. For a Sheriff's Execution Sale that does not involve a Homestead Residence, the bidding begins at \$1.00 as the Judgment Creditor's opening credit bid, and the Judgment Creditor can credit bid up to the full balance of its Judgment.

If the Judgment Creditor is the successful bidder at the Sheriff's Execution Sale, it will be responsible for paying the Sheriff's costs of sale. Those costs, which typically total in the \$200-\$400 range, primarily consist of amounts for:

- Service
- Levy
- Return
- Posting Sale Notice
- Certificate of Sale
- Recording fees
- Mileage Fees for Service of Process
- Fee to Vacate Levy.

The only significant cost is the Sheriff's commission, which is calculated by multiplying the successful credit bid amount x 8%, subject to a capped commission amount of \$2,000. As examples, if the credit bid is \$10,000, the Sheriff's commission is that amount x 8%, or \$800.

Regardless of the credit bid amount, the Sheriff's commission cannot be more than \$2,000. As an example, if

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<sup>2</sup>If the Sheriff's Execution Sale is of real property that is not a homestead property, then the Judgment Creditor does not have to pay cash to pay off the senior liens on the property and is only responsible for paying the Sheriff's fees to schedule and conduct the sale. Also, under this circumstance, the Sheriff's procedure is to have the Judgment Creditor bid \$1.00 as its opening bid. The Judgment Creditor and other bidders must do their due diligence to understand what liens will have to be paid off if they are the successful bidder and plan their bidding strategy accordingly. In addition, the Sheriff's hard costs and sale commission must be verified with the Sheriff and taken into account by any bidder at a Sheriff's Execution Sale.

the successful credit bid is \$100,000 instead, an \$8,000 commission (\$100,000 x 8%) would be the capped amount of \$2,000.00.

## Bidding Examples

Following is a mathematical example of the Judgment Creditor's opening credit bid at the Sheriff's Execution Sale of a Homestead Residence:

\$5,000 Senior Real Property Tax Lien Amount  
 +  
 \$200,000 Senior Lien Payoff Amount  
 +  
 \$150,000 Homestead Exemption Amount  
 =  
 Subtotal: \$355,000  
 +  
 \$1.00 over for the Judgment Creditor's opening credit bid of \$355,001.00.

If no other party bids at the sale, then the Judgment Creditor will have to pay:

- \$355,000 in cash to the Sheriff to pay off the Senior Real Property Tax Lien Amount and Senior Lien Payoff Amount; and
- the Sheriff's costs of sale and sale commission within five (5) calendar days after the date of the Sheriff's Execution Sale.

In exchange, the Judgment Creditor will receive a Certificate of Sale from the Sheriff and ultimately the Sheriff's Deed to the Homestead Property after the applicable six-month redemption period expires.

If another party bids, the Judgment Creditor will need to bid to protect its position. The Judgment Creditor will bid up to an amount until it would be happy to receive the funds from the other third-party bidder to credit toward the balance of its Judgment.

The Sheriff would then distribute the funds to pay the:

- Senior Tax Lien Amount to the Maricopa County Treasurer;
- Senior Lien Payoff Amount to the senior lien holders;

- Sheriff's costs of sale; and
- \$150,000 Homestead Exemption Amount to the Judgment Debtor.<sup>3</sup>

Following is another mathematical example:

- Value of the Homestead Residence=\$500,000
- Judgment Creditor's Opening Credit Bid=\$355,001

The Judgment Creditor could bid up to \$144,999 (\$500,000 minus \$355,001) to protect its position and recover the equity in the property for itself. This is assuming the Judgment Creditor is willing and able to write a check to the Sheriff for \$355,000 within 24 hours.

Typically, the Judgment Creditor would not bid up to the full \$144,999 – because it should take into account that it will incur Real Estate Owned ("REO") carrying costs and realtor commissions to sell the property if it is the successful bidder at the Sheriff's Execution Sale and takes title to the property. The Judgment Creditor may be satisfied to be paid funds from a third-party bidder that will compensate it for the net recovery it would receive if it took the property into REO and had to sell it itself.

As an example, assuming a 6% real estate commission of \$30,000 (based upon a \$500,000 value) plus \$10,000 of REO carrying costs, the Judgment Creditor would bid up to \$104,999.00 (in lieu of the full \$144,999.00 amount of equity in the property) and be happy to accept that amount from a third-party bidder.

Following is an example of how a typical bid works at a Sheriff's sale in which the successful credit bid is \$50,000 when dealing with a Non-Homestead Residence property (such as vacant land, commercial property, or an investment residence) in which the bidder does not have to pay off the Senior Real Property Tax Lien Amount and the Senior Tax Lien Amount and Senior Lien Payoff Amount:

\$ 269,182.40	Judgment Principal
\$ 1,347.76	Interest from the date of entry of judgment to the date of sale
\$ 129.60	Sheriff's hard costs of the Sheriffs Sale

<sup>3</sup>If the Judgment Creditor decides to bid on the property, the Judgment Creditor is responsible for paying the \$150,000.00 Homestead Exemption Amount, the prior unpaid real property taxes, the prior consensual liens and the Sheriff's costs of sale. Any additional amount over the foregoing sums generated by the bidding process would go toward satisfying the Judgment (when the homestead exemption does not apply, the Judgment Creditor is only responsible for paying the Sheriff's fees for the sale of the property). Should the property be more valuable than the homestead exemption, prior consensual liens, Judgment amount and Sheriff's costs of sale, any bid over that amount is sent to the Clerk of the Superior Court as excess proceeds (and if the Judgment Creditor was the high bidder, the Judgment Creditor would be responsible dollar-for-dollar any amount over the satisfaction of the Judgment, homestead exemption, prior consensual liens and Sheriff's fees).

\$ 2,000.00	Sheriff's commission, capped at \$2,000 (\$50,000 x 8% would be \$4,000, so the \$2,000 cap amount applies)
<b>\$ 272,659.00</b>	<b>Judgment, Interest and Costs ("JIC") announced at the sale</b>
\$(50,000.00)	Successful Credit Bid
\$ 222,659.00	Amount still owing on Judgment which will be reflected in the Sheriff's Return Of Sale

In this example, the successful bidder would need to come out of pocket only to pay the Sheriff the \$129.60 in hard costs + the \$2,000 commission for a total of \$2,129.60. The original \$200 deposit delivered to the Sheriff with the Writ of General Execution will be credited against the \$2,129.60, for a total remaining balance due of \$1,929.60 to be paid at the time of the sale.

If the property being sold is a Homestead Residence, the change to the above example is that the Judgment Creditor would have to pay off the Senior Real Property Tax Lien Amount + the Senior Lien Payoff Amount + the \$1,929.60 due to the Sheriff (\$2,129.60 - \$200 deposit) + the \$150,000 Homestead Exemption Amount to the Sheriff within five (5) days after the date of the Sheriff's Execution Sale.

## Conclusion

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To even pursue this remedy, the Judgment Creditor must perform the due diligence and conclude that there is sufficient equity in the value of the Homestead Residence above and beyond the total of the Senior Tax Lien Amount + the Senior Lien Payoff Amount + \$150,000 Homestead Exemption Amount + the Sheriff's costs of sale and sale commission.

In addition, the Judgment Creditor must be ready, willing and able to pay cash in an amount to pay off the senior liens, the \$150,000 Homestead Exemption Amount, and the Sheriff's costs and sales commission within five (5) calendar days' after the date of the Sheriff's Execution Sale. Further, the Judgment Creditor must understand that it will receive a Certificate of Sale as a result of the Sheriff's Execution Sale and must wait six (6) months for the redemption period to expire before it will receive an actual Sheriff's Deed to the property.

The bottom line is that, if the Judgment Creditor locates a Homestead Residence with a significant amount of equity in it over and above the Senior Lien Tax Amount + the Senior

Lien Payoff Amount + the Homestead Exemption Amount + the Sheriff's costs and sales commission and has the ability to pay the required sums in cash within five (5) days after the date of the Sheriff's Execution Sale if it is the successful bidder, then this can be a powerful collection remedy.

In that circumstance, it is very possible that a third-party bidder will pay a sufficient amount to pay up to the balance the Judgment Creditor will bid at the sale. If not, then the Judgment Creditor will obtain title to the property and can sell it out of REO to capture the equity from the property for its benefit.

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