CHAPTER 28-23
SALES UNDER EXECUTION

28-23-01. Sale of personal property - Notice of sale.

The officer who levies upon personal property, other than crops or perishable property, shall give public notice of the time and place of the sale by advertisement published once each week for two successive weeks next before the day of sale in the county's official newspaper.

28-23-02. Sale of crops.

If the levy is upon harvested crops, at the option of the judgment creditor, the crops may be sold in the nearest usual market for crops, at any time after such levy at the market price without publishing notice of sale. In that case, the notice of levy or a subsequent notice to be served as the notice of levy is served must state where and when the crops will be sold. Should the judgment debtor, or the judgment debtor's agent or attorney, at the time the levy is made, give notice to the officer making the levy that the judgment debtor intends to settle the judgment, the officer shall hold the grain six days before making sale of the grain. The usual and reasonable charges for the sale and transportation of the grain to market must be deemed proper expenses chargeable as costs in the proceedings, and in case the notice above provided for is served on the officer there also must be chargeable reasonable charges for storing the grain.

28-23-03. Perishable property.

Perishable property may be sold pursuant to the order of the court, prescribing such notice, time, and manner of sale as may be reasonable, considering the character and condition of the property.

28-23-04. Sale of real property - Notice of sale - Contents.

1. Before any real property or interest in real property taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale by advertisement in the county's official newspaper once a week for three successive weeks, the last publication to be at least ten days before the making of the sale.
2. Except for parties who have an ownership interest in the real property, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days before the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

28-23-05. Where sale of real property made.

All sales of real property or any interest in real property under execution must be held in the county in which the real property is situated, or at a place within the county as the sheriff designates in the notice of sale, or the place designated in the published notice of sale if the foreclosure is by advertisement.

28-23-06. Place of sale of personal property.

If the owner of the personal property levied on, other than crops, agrees to keep the property safely until the day of sale and requests that the sale be held on the premises where the property is seized, the sale must be held on the premises where the property is seized. Otherwise the sale may be had at the place designated by the sheriff in the notice of sale.

28-23-07. Time and manner of sale.

All sales of property under execution must be made at public auction to the highest bidder, between the hours of nine a.m. and four p.m. After sufficient property has been sold to satisfy the execution, no more property may be sold. A sheriff or other officer or the sheriff's or officer's deputy holding the execution or making the sale of property may not become a purchaser or be

interested directly or indirectly in any purchase at the sale. A purchase so made must be considered fraudulent and void. If the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and must be sold in 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 unless they constitute one parcel on which improvements have been constructed. The judgment debtor, if present at the sale, may direct the order in which property must be sold if the property consists of several known lots or parcels or of articles which can be sold to advantage separately. The sheriff or other officer shall follow these directions.

28-23-08. Postponements.

When there are no bidders, or when the amount offered is grossly inadequate, or when from any cause the sale of any real or personal property upon execution or upon the foreclosure of a mortgage or other lien is prevented from taking place on the day fixed, the sheriff, or person making the same, may postpone the sale for not more than three days without being required to give any further notice thereof, but the sheriff or person may not make more than two such postponements, and such postponements must be publicly announced when and where the sale should have taken place. Such sale may be postponed for a longer period than three days by continuing the publication of the original notice of sale together with notice of such postponement, specifying the time and place at which such postponed sale will be made.

28-23-09. Surplus paid judgment debtor.

Except for real estate foreclosure sales if the property sells for more than the amount required to be collected, the surplus must be paid to the judgment debtor, unless the officer has another execution in the officer's hands on which the surplus rightfully may be applied.

28-23-10. Sale after ninety days - Abandonment of levy.

In case of the failure of the sale by reason of irregularities in giving notice thereof, or of its postponement, the property may be sold upon proper notice by virtue of the execution after the expiration of the ninety days allowed for the return thereof, and the officer in the officer's return shall set forth the facts regarding such failure or postponement, or the judgment creditor, in writing filed with the clerk, may abandon such levy upon paying the costs thereof, in which case execution may issue with the same effect as if none had been issued.

28-23-11. Purchaser's right - Sheriff's certificate.

1. The purchaser of real property under execution is substituted for the judgment debtor and acquires all the right, title, interest, and claim of the debtor to the property. If the estate is a leasehold less than two years' unexpired term, the sale is absolute. Otherwise, the real property is subject to redemption under this title. The officer shall give to the purchaser a certificate of sale containing:
   a. A particular description of the real property sold;
   b. A statement of the price bid for each distinct lot or parcel;
   c. A statement of the whole price paid;
   d. If subject to redemption, a statement to that effect, including the applicable redemption period; and
   e. The name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.
2. The officer shall execute the certificate and acknowledge or prove the certificate as required for deeds of real property.

28-23-12. Recording of sheriff's certificate required - Evidence.

The sheriff's certificate of sale must be recorded in the office of the recorder of the county in which the real property is situated within ten days from the date of sale. The sheriff's certificate or a certified copy of the certificate certified by the recorder must be taken and deemed evidence of the facts in the certificate.

28-23-13. Proceedings upon confirmation.

If the court, upon the return of any execution for the satisfaction of which any real property or interest in real property has been sold, after having carefully examined the proceedings of the officer is satisfied that the sale has been made in all respects in conformity to the provisions of this chapter, the court shall make an order confirming the sale and directing the clerk to make an entry on the journal that the court is satisfied of the legality of the sale and an order that the officer make to the purchaser a deed of the real property or interest in the real property at the expiration of the redemption period unless the property is redeemed. The officer may retain the purchase money until the court confirms the sale, then the officer shall pay the money to the person entitled to the money by order of the court.

28-23-14. Reversal does not defeat sale.

If any judgment, in satisfaction of which any real property is sold, is reversed, the reversal does not defeat nor affect the title of the purchaser, but restitution must be made by the judgment creditor of the money received from the sale, with legal interest on the money from the day of sale.