

**SUPERSEDES**

CS 504.1, Writ of Execution, January 05, 2006

**REFERENCES**

MCA § 25-13-609; MCA § 25-19, Rule 1; MCA § 70-32-104; ARM 37.62.307

**Policy**

**Applicability**

This section contains procedures for enforcing a support judgment by seizing property due, owing, or belonging to the obligor. **Where the property is state lottery winnings, special procedures in section CS 507.5, Lottery Liens, apply; do not proceed with a writ of execution in this section until all applicable requirements in section 507.5 have been met.**

**Operation of Writ of Execution**

A writ of execution is an order issued by a court directing a levying officer to seize and sell certain specified property and to deliver the proceeds to a named recipient. In CSSD cases the issuing court is the district court where the underlying support order is filed; the levying officer is usually the sheriff of the county where the property is located; the property is owned by the obligor in the case; and the recipient of the net proceeds from the sale of the property is the CSSD.

The district court must have a basis upon which to order execution by writ. In CSSD cases this basis is a child support order filed with the court. The court issues a writ of execution based on this order at the request of the CSSD.

**Writ of Execution--General Context**

The CSSD uses the writ of execution to enforce payment of a support debt in cases where the obligor owns salable property or cash. The writ is an **optional** enforcement tool, appropriate only when certain required (legal) conditions are met, and certain additional CSSD policy considerations have been applied. A determination about whether to use a writ in a particular case is highly dependent on the facts and overall management of the case.

As an enforcement tool the writ may be used alone, or along with other enforcement methods such as income withholding or tax offset. The enforcement effect of a writ may be produced by seizure of the property alone, if the obligor pays the support debt to recover the property before sale; or, enforcement may be by sale of the property and application of the proceeds.

Writs can be executed on material assets (land, buildings, automobiles, recreational vehicles, livestock, furniture, equipment, jewelry, art, etc.), or on cash or cash-equivalents. Seizable cash may take the form of bank accounts, securities, till" cash on a business premises, income or benefits payable to but not yet received by the obligor, or other money assets.

**Required Conditions for Obtaining Writ of Execution**

A writ of execution is available only when all of the following conditions are met:

- 1) Support Order. There must be a child support order in effect in the case in Montana.
- 2) District Court Basis. The support order must be on file with the district court issuing the writ. To be considered on file the order must be an order of the district court, an order issued or registered by the CSSD and abstracted to the district court, or a foreign order registered directly by the district court

**NOTE:**

**County of Property Irrelevant to Court Basis.** The property in question may be located in the same county as the court issuing the writ, or in a different county. Every Montana district court has the authority to order any Montana county sheriff to levy against property in the sheriff's county.

- 3) Status of Asset. The asset that is the subject of the execution may be either real or personal property, and must be:
  - Identifiable and located. The CSSD must be able to describe the asset and its location sufficiently to enable the sheriff to seize it. The CSSD may request a writ for an asset that is not known but suspected to exist, such as an account at a particular bank.
  - Salable or cash. Non-tangible assets (such as the value of a business's name, license, or clientele) are not subject to writ.
  - Owned by the obligor. This includes assets (1) held (and owned) now by the obligor or (2) approved for distribution to the obligor at some time in the future. Assets most commonly seized before distribution are workers' compensation or other insurance settlements; inheritances; proceeds from lawsuits; wage or salary earnings; or proceeds from property, sales, or investments. Approval for distribution must be by the payor, an executor, the court, or some other entity authorized to distribute the asset.
  - Sole ownership of the asset is not required; assets owned by the obligor and another party in joint tenancy are also subject to writ of execution. A supervisor should be consulted on all questions of execution on jointly owned assets.
  - Located in Montana. For purposes of obtaining a writ of execution, assets located in Montana are (1) assets physically located in Montana, (2) income whose payor is physically located in Montana, or (3) income paid by an out-of-state entity through a Montana agent. See CS 250.1, Native American Jurisdiction, for further information on enforcing against assets in Native American cases.

- Able to yield net proceeds beyond any claimed exemptions. Certain types of property are exempt from execution. Exemptions may be unlimited (for the whole value), or subject to specified value limitations, depending on the property.
- The obligor may claim a limited homestead exemption in a house. In 2021 the homestead value limit was \$350,000. The homestead value limit increases by 4% every calendar year after 2021. (The house must be the obligor’s residence – see Title 70, Chapter 32, MCA).

The obligor may claim a limited net earnings exemption for 35% to 50% of the earnings (the exact percentage depends on the obligor’s other support expenses and the number of months the judgment being enforced is past due (MCA § 25-13-614).

The obligor may claim other limited exemptions in a primary vehicle up to \$4,000; personal property up to \$7,000 aggregate value, or up to \$1,250 for any one item (jewelry, firearms, crops, household furnishings, etc.); the tools of the obligor’s trade up to \$4,500; and any unmatured life insurance.

The obligor may claim unlimited exemptions in prescription health aids; public assistance benefits; veterans and social security benefits, except those based on remuneration for employment; medical benefits up to the cost of care; child and spousal support; and one burial plot, details of limited and unlimited exemptions are in MCA § 25-13-608, 609.

**NOTE:**

**Exemptions Not Applicable Beyond Amount of Obligor's Interest in Property.** An obligor may claim an exemption from execution only to the extent the obligor owns an interest in the property. For example, if an obligor owns \$10,000 equity in a house that is mortgaged for an additional \$35,000 and sold for \$60,000, the obligor's homestead exemption would be limited to \$10,000.

- 4) Support Debt. The debt **need not be adjudicated** (reduced to a sum-certain judgment through notice and opportunity for hearing). However, the debt must be for an exact amount, and the CSSD must be able to show, if necessary, how the debt accrued. Monthly accumulation records are not required with the writ request. There is no minimum amount set by the court or the CSSD for obtaining a writ.

Generally, the CSSD uses the Debt Computation Worksheet to specify and document accrual of debt amounts for its own purposes. A region may, at its discretion, submit a Debt Comp with the writ request. The region may also set a minimum debt amount for requesting a writ.

**NOTE:**

**Status of Obligor Not Related to Writ Requirements.** Location of the obligor is not necessary to proceed with a writ of execution. Also, the CSSD does not need personal jurisdiction over the obligor: the court has subject matter jurisdiction to enforce its own order in Montana.

**Further Considerations**

Although technically eligible, not all cases that meet the above requirements will be suitable for enforcement by writ of execution. The CSSD will also consider the following criteria in determining whether to proceed with a writ in a particular case:

- 1) **Value of Asset at Sale.** Generally, the expected net proceeds from the sale of the asset should be great enough to justify the CSSD time spent obtaining the writ. In some cases, however, it may be helpful to obtain a writ even when net proceeds will be small (to indicate to the obligor the CSSD's continued interest in the case, or to encourage the obligor to pay the debt to keep the property from being sold). Net proceeds are equal to sale price less the amount of any prior liens on the property, any fees charged by the sheriff for storage or maintenance of the asset during the time between seizure and sale (including feeding livestock), payment to a joint owner of the asset proportionate to that person's interest in the asset the value of any exemptions claimed, and any fees charged by the sheriff for execution of the writ.

None of these costs is certain to occur, prior liens may have been paid off, the obligor may fail to claim exemptions, see NOTE below, or the sheriff may choose not to charge any fees. The caseworker should research the conditions surrounding the proposed sale of an asset to determine any likely costs.

**NOTE:**

**Exemption Policy.** When property is seized under a writ of execution both the obligor and the property holder are notified that certain statutory exemptions from execution may apply. The notices list the possible exemptions and, in the case of the obligor, the procedure for claiming an exemption. When the CSSD knows an exemption will be claimed **or could be claimed**, and the net expected proceeds after any possible exemptions would be small, there may be an appearance the CSSD is only taking the property to harass, and is guilty of abuse of process. A supervisor should be consulted in all exemption situations, to ensure the enforcement action is an appropriate use of authority.

**NOTE:**

**General Caution in Obtaining Writs against Non-Cash Assets.** In addition to the deductions from sale price listed above, the CSSD may incur substantial, pre- and post-sale expenses or responsibilities in executing on non-cash assets. For example, the CSSD may be required to make detailed arrangements in aid of the seizure, transportation, storage, maintenance, sale, and final disposition of the asset; give notice of CSSD actions to other parties holding an interest in the property; or take other actions required in converting the asset to a cash amount and distributing the receipts according to law. (Montana law also requires writ requestors to post a bond when substantial costs will be incurred by the sheriff, but Montana state agencies are exempt from this requirement (section 25-1-402, MCA).) **Regions should carefully consider the total costs to the CSSD of executing on any non-cash assets before initiating a writ.** It is usually not practical to execute on jointly owned non-cash assets.

- 2) Role in Reducing Support Debt. Generally, a writ is appropriate only when debt reduction through routine methods (income withholding, regular voluntary payment) has been unacceptable. For non-paying cases a writ (if available) should always be considered. For paying cases, the region must use its discretion, as shown in the following examples:

EXAMPLE 1: The CSSD is enforcing an obligor's current obligation and support debt through income withholding; there has been a hardship determination in the case, and the support debt is very large. An asset becomes available for execution by writ. The CSSD may wish to proceed with the writ, to decrease the payoff time for the debt.

EXAMPLE 2: Although no employer is located, an obligor is making regular payments toward both current support and arrears, missing a payment only infrequently. The arrears payments are sufficient to pay off the debt within a reasonable time. An asset becomes available for execution by writ. The CSSD may choose not to seize the asset, allowing the obligor to continue what has been an acceptable payment schedule.

- 3) Effect on Ability to Pay Support. Generally, a writ is appropriate only when the asset is not tied to the obligor's ability to pay support. For example, where the obligor owns inventory or equipment used in an income-producing business, the CSSD may determine the asset is more valuable in the hands of the obligor than converted to cash. In a different example, the obligor may plan to use a soon-to-be-received asset (such as an inheritance) to set up or improve the output of a business--if the CSSD believes the plan is dependable it may wish to allow the obligor to keep some or all of the assets for this purpose.
- 4) Convenience Compared to Other Forms of Enforcement. A writ may be preferable to certain administrative means of enforcing the support debt if the administrative method involves significantly greater effort or cost on the part of the CSSD, involves a significant risk of the obligor dissipating the asset before the CSSD can act (if the administrative method includes notice to the obligor, for example, and there is reason to believe the obligor will sell or spend the asset or remove it from the Montana court's jurisdiction), involves a longer lead time before payment, will net less money toward the support debt, or will be less effective or less direct overall in enforcing payment.
- 5) Existence of a Reasonable Expectation of Privacy. Where the property to be seized is located in the obligor's residence, or in any other area determined by the sheriff or levying officer to be subject to a reasonable expectation of privacy, Montana statute requires a warrant of execution in addition to a writ. The court can issue a warrant of execution if the judge determines there is reasonable cause to enter, and to levy upon property in, an area otherwise protected by the obligor's right of privacy. Reasonable cause generally requires a showing that there is no other property of the obligor's available for levy and execution.

As a matter of policy, the CSSD does not proceed against property located in the obligor's private residence. In cases involving personal property located outside of the obligor's residence, the CSSD proceeds only if it believes the right of privacy does not apply. Only in extremely rare situations, where the facts of the case appear to justify the additional proofs and actions required, will the CSSD consider an exception to this policy. **In all cases involving possible privacy protections, consultation with and approval of the CSSD staff attorney is absolutely required.**

**Case Management: Writ of Execution versus Warrant for Distrain**

In cases where the seizure and sale of assets is appropriate to reduce a support debt, the CSSD may initiate enforcement in one of two ways: (1) judicially, by writ, or (2) administratively, by warrant for distrain. A warrant for distrain operates much like a writ of execution except that the warrant for distrain is issued by the CSSD and may be sent directly to the sheriff or levying officer without going through the court (does not require a district court basis); is issued by the CSSD and may be sent by mail service acknowledgment directly to entities that hold cash accounts or make cash disbursements to the obligor, such as financial institutions, insurance companies, and the Montana Lottery; is issued for adjudicated debts only; and can be issued at any time after the debt accrues (is not limited to issuance within specified time after accrual, for debts incurred before October 1993).

Because of the requirement for an adjudicated debt, the warrant must be preceded by a notice or other proceeding alleging a specific debt and providing the obligor with an opportunity to dispute the debt amount. In general, a writ may be preferable to a warrant if the debt includes unadjudicated amounts; a warrant may be preferable if the entire debt amount has been adjudicated and (a) quick enforcement on the asset is essential, or (b) the support order is a foreign order not registered in Montana.

**Executing on Payable Assets--Timing Considerations**

It is important to determine, as closely as possible, when a payable asset will be distributed to the obligor, and to time the issuance of the writ accordingly. If the final approval or order for the payment has not been given, the obligor may be able to have the payment made to another recipient. If the payment is completed more quickly than anticipated, the obligor may be able to dispose of the asset before the writ can be served.

**Executing on Payable Assets--Montana Agents**

To be enforceable in Montana, a writ of execution for an asset held by an out-of-state payor must be served on a Montana agent of that payor. It is not necessary for the Montana agent to ever hold or process the asset, as long as it represents the payor for purposes of service of process. Official Montana service of process agents for out-of-state corporations are listed with the Secretary of State.

**NOTE:**

**Montana Insurance Commissioner.** For purposes of service of process, the Montana Commissioner of Insurance is a Montana agent for all out-of-state insurance companies having Montana agents. The CSSD may at times find it more convenient to serve a writ directly on the Commissioner (via the Lewis and Clark County Sheriff) than to try to locate and serve the individual Montana agent for the company. The Montana Secretary of State is not an agent for service of out-of-state corporations, however.

**Recovery of Property by Obligor**

Generally, the CSSD will allow the obligor to recover seized property before it is sold if the obligor pays the CSSD the full amount of the support debt, or a partial amount agreed to by the CSSD. The CSSD will then notify the sheriff the judgment has been satisfied or partially satisfied, and the property should be returned to the obligor. Additionally, the obligor may recover an amount equal to any statutory exemption in the money or property seized by claiming the exemption within 10 working days after being served with a notice of seizure (see Sheriff's Time Frames below). Recovery of property after sale is limited to redemption of real property, and must be arranged by the obligor with the purchaser within one year.

**Sheriff's Time Frames: Executing on Writ, Forwarding Proceeds**

The sheriff must execute a writ within 120 days after receiving the writ. Execution includes seizing and, if necessary, selling the asset identified in the writ. The sheriff must then return any proceeds of the execution to the CSSD within 120 days, but not sooner than 10 days, after execution.

Further, to allow the obligor to claim an exemption in the money or property seized, the sheriff must serve a notice of seizure on the obligor within 5 days after seizing the money or property. The sheriff may not sell or distribute any proceeds of the execution for at least 10 working days after serving the notice of seizure.

**Court Requirements**

All documents presented for filing with the district court are subject to the format and paper-content requirements of the Montana Uniform District Court Rules (see 25-19-Rule 1, MCA). In addition, the original issued writ of execution must be returned to the Clerk of Court after the levy is completed. CSSD's system-generated documents, and the PROCEDURES in this section, are designed to comply with both requirements.

**District Court's Time Frames**

Upon receipt of a timely request from the obligor for a hearing to claim an exemption in the money or property seized, the court must conduct the hearing within 10 working days after the date the request was received.

### Distribution of Proceeds

The following restrictions apply to the distribution of writ proceeds:

- 1) Proceeds may be applied only to the case for which the writ was issued. Because the district court's writ authority over an obligor extends only to enforcement of the support order the court has issued or filed, the writ may not be used to enforce debts incurred by the obligor in other cases.

Where restriction 1) applies a Manual Payment Instruction (MPI) **must** be entered on system specifying the correct distribution of writ proceeds.

- 2) Proceeds may be applied only to the specific debts for which the writ was issued. In applying to the court for a writ in a particular case, the CSSD certifies the total amount of the debt the writ will enforce, and states how and through what date the debt has been incurred. Amounts owed by the obligor when the proceeds are received are payable only to the extent the amounts were included in the debt basis of the writ. However, federal law requires any payment to be distributed to current support for the month in which the payment was received, then to arrears.

#### NOTE:

**Request to move writ proceeds from current to arrears.** When proceeds from a writ of execution apply to current support *prior to* receiving an income withholding payment for the same month, an adjustment request can be made to move the writ proceed to the arrears.

### Multiple Obligees

Where the obligor owes arrears or other debt in more than one case, the MPI should target the payment to the account(s) for the correct obligee.

### Unavailable Debt

Where the obligor's total debt in the case includes amounts not certified to the court (for example, the debt was incurred after the writ was requested, or was incurred earlier than six years before the request (see Statute of Prohibition below)), the MPI should specify, by account, any amounts to be left unpaid.

Once the writ of execution has been issued it is important to determine if a MPI is necessary. A MPI is effective only when it is in place *before* proceeds from the writ are posted to the system.

### Statute of Prohibition for Debts Accrued Before October 1993

All support debts incurred before October 1, 1993, are subject to the general time limit governing writs of execution--that is, the Clerk of Court cannot issue a writ to enforce a debt incurred more than six years before the writ is requested (the request date is the date the court receives the CSSD's application). This restriction can be removed by special leave of the court, but obtaining the exception often has practical disadvantages. A supervisor should be consulted about pursuing any prohibited amounts. For support debts incurred on or after October 1, 1993, the Clerk of Court may issue a writ at any time within 10 years after the termination of the support obligation in the case.

In calculating the total debt amount to be submitted to the court, **the region must first determine the correct debt history by assuring all payments received in the case have been applied to the oldest debt first.** Then, using the corrected information on amounts and accrual dates for the unpaid debt, the region must identify and (generally) exclude any amounts that were incurred both (1) before October 1, 1993, **and** (2) more than six years before the writ will be requested.

**NOTE:**

**Inclusive Determination of Debt--Certain Districts.** A few district courts in Montana require leave of the court for all writs, regardless of the debt accrual date. Regions may choose to include prohibited debts in the amounts certified to these courts.

**PROCEDURES**

The following basic actions must be performed by the CSSD for successful writ processing. **However, individual staff responsibility for a given action may vary from region to region.** Responsibility may be assigned to the caseworker, the supervisor, the paralegal, or the staff attorney, depending on regional preference. Regional variations also occur in the individual steps under each basic action. Please identify the steps and responsibilities that apply to your region; you may wish to add to these pages any specific internal (written) procedures in use in your region.

PLEASE NOTE: The following PROCEDURES contain steps taken by the sheriff and the district court, as the CSSD understands them. These steps are included for purposes of context only, and do not assert or require the stated actions. **The CSSD's policies and procedures are not binding on the sheriff's office, the district court, or any other external agency.**

SHERIFF DEFINED: The term sheriff as used in these PROCEDURES means the county sheriff or any other levying officer.

**Procedures for Caseworker**

1. Identifies a case appropriate for a writ of execution by applying the following tests:
  - a. The obligor in the case has identifiable asset(s).
  - b. The case satisfies the required conditions for a writ (support order, asset, and debt status, see Required Conditions, POLICY).
  - c. Case facts relating to further considerations are positive (asset value, enforcement effect, comparative convenience, and privacy protections, see Further Considerations, POLICY).

If the case is appropriate for writ enforcement except that the support order is not on file in a Montana district court, takes actions to abstract the order to a district court. For foreign orders, obtains a district court basis by either (1) registering the foreign order with the CSSD and then abstracting to district court or (2) arranging for registration of the order directly with the court.

- Identifies the county where the asset is located--this is the county whose sheriff must serve the writ.
- Identifies the judicial district court where the support order is filed--this is the judicial district whose Clerk of Court must issue the writ.

If the asset identified for execution is a non-cash asset, immediately notifies and works with the CSSD staff attorney to coordinate actions by the CSSD, the sheriff, and others for successful seizure, maintenance, sale, and proceeds distribution.

2. Prepares a writ application package containing the following documents:

**NOTE:**

**Court Documents.** Items (1), (2), and (7) below are subject to special paper requirements for district court filings (see Court Requirements in POLICY). All originals and copies sent in this step must be printed on the required paper.

**NOTE 2:**

**Heading Adjustments.** Items (1), (2), (4), (6), (7), and (8) below share a standard, system-generated heading format. Regions or individual CSSD staff attorneys may, at their discretion and within court parameters, adjust the headings in these documents to accommodate style preferences or the facts of the case.

- 1) Form CS504-1A Writ of Execution (original and three copies)--directing the sheriff of the county identified in step 1 to levy against the property described in the writ, and to return service and any proceeds to the CSSD.
- 2) Form CS504-1F Affidavit and Application for Writ of Execution (original)--swearing to the debt amount and how it was accrued, stating the CSSD's authority to enforce the case, and bearing the notarized signature of the CSSD staff attorney.
- 3) Form CS501-1B Debt Computation Worksheet, with certification (two originals)--showing the monthly accrual of the support debt and bearing the notarized signature of the caseworker.
- 4) Form CS504-1E Praecepto to Clerk of Court for Writ of Execution (original)--asking the Clerk of Court for the judicial district identified in step 1 to issue, or have issued, the enclosed Writ of Execution; conform two copies of the issued writ (mark or stamp two of the submitted copies so they become official court copies); and send directly to the appropriate sheriff the issued writ, the conformed copies, and items (6) through (10) below.

**NOTE 1:**

**Return-of-Copy Option.** The praecipe may, at the region's option, ask the Clerk of Court to send an additional conformed copy of the writ directly to the CSSD.

**NOTE 2:**

**Return-of-Writ Option.** The praecipe may, at the region's option, ask the Clerk of Court to send the issued writ (with the two conformed copies) directly to the CSSD for forwarding to the sheriff.

- 5) Pre-addressed, stamped envelopes for the clerk of court's mailing or delivery to the sheriff and, if a return option is elected in NOTE 1 or 2 above, to the CSSD.
- 6) Form CS504-1D Sheriff's Praecipe for Writ of Execution (original)--to the sheriff of the county identified in step 1, alerting the sheriff to the requirements added to the property seizure statutes in 1999, and providing a checklist of the steps the sheriff must now take to execute the writ. (This document is not included in the package sent to the Clerk of Court if the region elects the return-of-writ option in item (4).)
- 7) Form CS504-1B Notice of Seizure (two originals)--notifying the obligor that property was seized, and an exemption may be available, and stating the procedure for claiming the exemption.
- 8) Form CS504-1C Notice of Levy and Exemptions (original)--notifying the property holder on whom the writ is served of the levy against the obligor; directing the property holder to transfer the property to the sheriff; and describing the exemptions from execution provided by Montana statute.
- 9) If applicable, additional documents required by the district court or the sheriff's office for execution of a writ, or required in connection with the seizure and sale of a non-cash asset.

EXAMPLES: Answer to Garnishment; arrangements for sheriff's sale; agreements for costs of maintaining property before sale; notice to holders of superior claims.

Consult your supervisor or paralegal to determine which of the above documents may apply.

- 10) Pre-addressed, stamped envelopes for the sheriff's mailings to the obligor and the CSSD. Assembles the complete writ package containing (originals and any required copies):
  - Writ of Execution
  - Affidavit and Application
  - Debt Computation Worksheet (one)
  - Praecipe to Clerk of Court
  - Envelope addressed to the CSSD (if applicable)
  - Sheriff's package (assembly described below)

Assembles the sheriff's package by inserting in the envelope addressed to the sheriff the originals and any required copies of the following items, leaving the envelope unsealed:

- Sheriff's Praeipie
- Notice of Seizure
- Notice of Levy and Exemptions
- Debt Computation Worksheet (one)
- Additional documents if applicable
- Envelopes addressed to the obligor and the CSSD

Sends the complete writ package by regular mail to the clerk of court for the judicial district identified in step 1; retains a copy of the package for the case file. Enters a case note for the package sent to the clerk for issuance, monitors for the sheriff's return of service.

3. If the region elected the return-of-copy option in step 2, monitors for return of the conformed copy of the writ from the clerk of court; enters a case note for the writ received, and resolves any problems concerning issuance of the writ.
4. If the region elected the return-of-writ option in step 2, monitors for return of the issued writ and two conformed copies of the writ from the clerk of court; enters a case note for the writ received, and resolves any problems concerning issuance of the writ. Prepares and sends to the sheriff by regular mail the issued writ, the conformed copies, and items (6) through (10) in step 2 above, and enters a case note for the documents sent directly to the sheriff.
5. If notified by the sheriff that a warrant of execution is required for the property in question, consults with a supervisor to determine whether continued enforcement against the property is advisable in the case. If so, works with the staff attorney to take appropriate action (see POLICY).

**NOTE:**

**Rarely Used Procedure.** Because the CSSD normally does not pursue property located in an obligor's private residence, it is unlikely this step will ever apply in CSSD cases.

**Procedures for Sheriff**

6. Within 60 calendar days after the date of issuance, executes the writ by taking the following actions:
  - 1) Serves the writ and the notice of levy on the property holder
  - 2) Seizes the property or arranges for transfer of the property to the sheriff's control or possession.

**NOTE:**

**Service Procedures.** The sheriff serves the writ on the property holder by personally presenting, but retaining possession of, the original (issued) writ, and furnishing a conformed copy of the writ for the property holder to keep. The sheriff serves the notice of levy by personally delivering the original document.

7. Within 5 calendar days after execution of the writ, completes the certificate of mailing on both originals of the Notice of Seizure. To one original of the Notice of Seizure attaches the remaining conformed copy of the Writ of Execution, and the Debt Computation Worksheet. Sends the notice with attachments to the obligor by regular mail. Monitors for notification of a hearing request (by sheriff's copy--see NOTE below, or by other notification) within 10 working days plus 3 mailing days after the date entered in the certificate of mailing.
  - a. If notification of a hearing request is timely received, takes no action against the property until notified of the court's determination; then proceeds to step 12.
  - b. If no notification of a hearing request is timely received, proceeds immediately to step 12.

**NOTE:**

**Response Requirements.** The obligor may respond to the Notice of Seizure by filing a request for an exemption hearing with the district court within 10 working days of the date the sheriff mailed the notice. The obligor must mail copies of the request for hearing to both the sheriff and the CSSD on the date the request is filed.

**Procedure for Caseworker**

8. Upon being notified (by receipt of the required copy--see above NOTE, or directly by the court) that the obligor has requested, and/or the court has scheduled, an exemption hearing, enters the appropriate case notes for the hearing requested and scheduled, and advises the CSSD staff attorney. If required, works with the attorney and participates in the hearing as appropriate. Proceeds to step 11.

**Procedure Staff Attorney**

Upon being notified the obligor has requested an exemption hearing, takes appropriate steps to resolve the issue. If the matter cannot be resolved, represents the CSSD at the exemption hearing, and enters a case note for the hearing held.

**NOTE:**

**Determining Timeliness.** If the timeliness of the obligor's request is important to negotiations or to the CSSD's case at hearing, further investigation may be required to determine the actual dates of sheriff's service and the obligor's response.

**Procedure District Court**

9. Upon receipt of a written request for an exemption hearing from the obligor, schedules the hearing for a date within 10 working days after the date the request was received, and informs the parties. Conducts the hearing and makes a determination on the obligor's claim according to MCA Title 25, Chapter 13, or other provisions of state or federal law. Issues an order determining the claim, and forwards copies of the order to the obligor, the sheriff, and the CSSD.

**Procedure for Caseworker**

If an exemption hearing is held, monitors for receipt of the order from the hearing. Upon receipt, consults with a supervisor regarding any appropriate steps, and enters a case note for the determination received.

**Procedures for Sheriff**

10. Determines whether the gross proceeds expected from the seizure (and sale if necessary) of the property exceed the total of any superior liens, sheriff's fees, and exemptions.
  - a. If so, sells the property (if necessary), and distributes the proceeds as required to satisfy the applicable liens, fees, exemptions, and CSSD judgment; distributes any excess proceeds to the obligor.
  - b. If not, returns the property to the obligor.
11. Completes the writ of execution process by preparing and sending to the CSSD a return-of-service document listing the date and method of service of the writ of execution and the accompanying notice of levy, and the amount of any proceeds payable to the CSSD; a check for the amount of the net proceeds, if any, up to the amount of the writ; the original (issued) writ of execution; the (remaining) original Notice of Seizure, showing the date the notice was mailed to the obligor; any additional documents as appropriate (for example, an Answer to Garnishment from a third party).

**NOTE:**

**Continuing Levy.** If the proceeds do not satisfy the full amount of the writ, and if additional levies may be practical, the sheriff may retain the original writ and seize additional amounts that become available within the 120 days before the writ expires.

**Procedures for Caseworker**

12. Upon receipt of the sheriff's return of service, enters the appropriate case notes for the writ served, the notice of seizure mailed, and the service returned. Prepares and sends by regular mail a filing package for the Clerk of Court containing:
  - 1) The original (issued) Writ of Execution
  - 2) The original Notice of Seizure, with the certificate of mailing completed by the sheriff
  - 3) The sheriff's original return-of-service document
  - 4) Form CS503-7A Praecept to Clerk of Court (original), asking the Clerk of Court to file the attached documents with the district court
  - 5) If applicable, a Satisfaction of Judgment or Partial Satisfaction of Judgment, signed by the CSSD Staff Attorney. (This is a non-SEARCHS document, usually maintained in the region as a word processing file; it is subject to format and paper requirements of the district court (see Court Requirements, POLICY)).

Retains a copy of the package for the case file; enters a case note for the executed writ and notice of seizure sent to the clerk of court for filing.

**NOTE:**

**Filing of Original Writ Imperative.** This step is crucial in preserving successful relations with the Clerk of Court, and in obtaining future writs of execution.

**Procedure Caseworker/Regional Staff**

13. Immediately upon receipt in the regional office of the proceeds from the writ, arranges for processing as follows:
  - a. Copies the check, sends the original to TAPP with the appropriate back-up documentation (or notation on the check) identifying the pay source (writ of execution) and the obligor participant identification (PAR) number; retains a copy for the case file.
  - b. In cases involving multiple obligees or other special distribution requirements (see Distribution of Proceeds, POLICY), prepares a Manual Payment Instruction (MPI) to supplement the information submitted with the payment and enters the MPI on system.
  - c. Informs the Regional Manager of receipt of the proceeds and of the net dollar amount, for lump-sum collections tracking purposes.