

FIERI FACIAS

The name of a writ of execution. It is so called because, when writs were in Latin, the words directed to the sheriff were, quod fieri facias de bonis et catallis, etc.; that you cause to be made of the goods and chattels, etc.

The foundation of this writ is a judgment for debt or damages, and the party who has recovered such a judgment is generally entitled to it, unless he is delayed by the stay of execution which the law allows in certain cases after the rendition of the judgment, or by proceedings in error.

The Form Of The Writ.

The writ is issued in the name of the commonwealth or of the government, as required by the constitution, and directed to the sheriff, commanding him that of the goods and chattels, and (where lands are liable for the payment of debts) of the lands and tenements of the defendant in his bailiwick, he cause to be levied as well a certain debt of dollars, which the plaintiff, in the court of (naming, it,) recovered against him, as - dollars like money which to the said plaintiff was adjudged for his damages, which he had by the detention of that debt, and that he, (the sheriff) have that money before the judges of the said court on a day certain, (being the return day therein mentioned,) to render to the said plaintiff his debt and damages aforesaid, whereof the said defendant is convict.

It must be tested in the name of the officer, as directed by the constitution or laws as; 'Witness the honorable John B. Gibson, our chief justice, at Philadelphia, the tenth day of October, in the year of our Lord one thousand eight hundred and forty-eight. It must be signed by the prothonotary, or clerk of the court, and sealed with its seal. The signature of the prothonotary, in Pennsylvania, is not indispensable. The amount of the debt, interest, and costs must also be endorsed on the writ. This form varies as it is issued on a judgment in debt, and one obtained for damages merely.

The execution being founded on the judgment must, of course, follow and be warranted by it. Hence, where there is more than one plaintiff or defendant, it must be in the name of all the plaintiffs, against all the defendants. It is either for the plaintiff or the defendant. When it is against an executor or administrator, for a liability of the testator or intestate, it is conformable to the judgment and must be only against the goods of the deceased, unless the defendant has made himself personally liable by his false pleading, in which case the judgment is de bonis testatoris si, et si non, de bonis propriis, and the fieri facias must conform to it.

Its Effects.

At common law, the writ bound the goods of the defendant or party against whom it was issued from the test day; by which must be understood that the writ bound the property against the party himself, and all claiming by assignment from, or by,

representatives under him; so that a sale by the defendant of his goods to a bona fide purchaser did not protect them from a fieri facias tested before, but not issued or delivered to the sheriff till after the sale.

To remedy this manifest injustice, the statute of frauds was passed. The principles of this statute have been adopted in most of the states. The statute enacts "that no writ of fieri facias, or other writ of execution, shall bind the property of the goods of the party against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, or coroners to be executed; and for the better manifestation of the said time, the sheriffs, etc., their deputies or agents shall, upon the receipt of any such writ, (without fee for doing the same) endorse upon the back thereof the day of the month and year whereon he or they received the same."

The Manner Of Executing It.

The execution of the writ is made by levying upon the goods and chattels of the defendant, or party against whom it is issued; and, in general, seizing a part of the goods in the name of the whole on the premises, is a good seizure of the whole.

The sheriff cannot break the outer door of a house for the purpose of executing a fieri facias; nor can a window be broken for this purpose. He may however, enter the house if it be open and, being once lawfully entered, he may break open an inner door or chest to seize the goods of the defendant, even without any request to open them. Although the sheriff is authorized to enter the house of the party to search for goods, he cannot enter that of a stranger for that purpose without being guilty of a trespass, unless the defendant's goods are actually in the house. The sheriff may break the outer door of a barn or of a store disconnected with the dwelling-house and forming no part of the curtilage. The fi. fa. may be executed at any time before and on the return day, but not on Sunday where it is forbidden by statute.

Fieri Facias Information

This is for information purposes only and should not be construed as legal advice. The personnel of this agency are prohibited from acting as legal counsel or granting legal advice. The information is merely to acquaint an individual in regards to the legal instrument known as Fieri Facias. The information is provided to assist those citizens who have obtained, or considering obtaining, a Fieri Facias and would like to have the Cobb County Sheriff's Office assist with the collection. Our intent is to provide adequate information to allow you to make an informed decision regarding the collection of Fieri Facias. The information is not necessarily applicable in any other jurisdiction. You should consult with an attorney or the appropriate laws of Georgia for more detailed information.

Definitions

Fieri Facias -- A writ commanding the sheriff to levy and sell as much of a debtor's property as is necessary to satisfy a creditor's claim.

Levy -- to seize or attach property by judicial order and convert into dollars to satisfy a debt.

Plaintiff -- a person who brings suit in court. Defendant -- a person whom a claim or charge is brought against in court.

Actions prior to a Levy

- The plaintiff may request that the sheriff's office contact the defendant and make a "demand to settle debt" on the plaintiff's behalf. This requires that the plaintiff provide the sheriff's office with the **original** Fieri Facias.
- The sheriff's office will advise the defendant that the demand is an attempt to settle the Fieri Facias prior to enforcing a levy.
- If the defendant ignores the demand or refuses the offer of settlement, the next step may be a levy of personal property to be sold on the courthouse steps to satisfy the Fieri Facias. [Pending Sales](#)

Levy

- In simple terms, a levy is the seizing of property by the sheriff's office to be sold on the courthouse steps to satisfy an outstanding Fieri Facias
- It is the responsibility of the plaintiff or his agent to identify the assets that may be levied upon. The sheriff's office does not identify the items to be levied or assume any liability as to the items levied upon
- The plaintiff or plaintiff's agent proceeds at their own peril. Plaintiff's should acquaint themselves with the following Georgia Statutes: [O.C.G.A. 9-13-50](#) & [O.C.G.A. 9-13-16](#)
- No item may be levied that has any outstanding lien. The plaintiff must show that there has been an adequate investigation to determine the existence of liens upon the property sought. This proof is required at the time of levy.
- The following three elements must be present at the time of levy:
 - 1 -- The defendant must be present.
 - 2 -- The plaintiff or plaintiff's agent must be present.
 - 3 -- A sheriff's office deputy and the original Fieri Facias must be present.
- At the time of the levy, the deputy sheriff will make a demand for the amount of the judgement, allowing the defendant the opportunity to satisfy the debt.
- The deputy sheriff will advise the defendant that he/she may point out the item(s) of personal property that can be levied.
- If the defendant refuses to comply, the plaintiff or plaintiff's agent will be given the opportunity to point out the item(s) to be levied upon to satisfy the debt.
- The levied item(s) are taken into custody by the deputy sheriff until the time of sale.

- The plaintiff or plaintiff's agent is responsible for the arrangements and cost of storage for the levied item(s).

Levy of Personal Property

- If personal property such as household goods, furniture, office equipment, and other such items are the subject of the levy, the plaintiff is responsible for contracting the approved and bonded warehouse for storage. The plaintiff is responsible for any cost associated with this storage. The cost associated with storage must be paid prior to the items being released for sale. Presently, the Cobb County Sheriff's Office has approved **Town Center Storage**, their telephone number is (770) 421-0644. The storage facility is located at 1815 Cobb Parkway, Marietta, Georgia.
- The plaintiff is responsible for making the necessary arrangements for moving levied items to the storage facility. The levied items will, at all times, be under the observation of a deputy sheriff until the time these items are secured at the storage facility.
- If the plaintiff contracts with the approved storage facility to have the levied items moved, the plaintiff should obtain three (3) dates from the service provider and submit these dates to the sheriff's office.
- The sheriff's office will select the appropriate date and schedule the levy to take place at the chosen date.