

# Levy on Disputed Property<sup>i</sup>

(This form to accompany executions on property at the request of the Sheriff of Franklin County Tennessee.)

There is an important exception to the statutory mandates that a sheriff obey the command of the process virtually without question. When executing a levy, no Sheriff is required to seize any property the title of which is disputed, or to sell the same after levy, unless the plaintiff will first give an indemnity bond and security to the officer. The bond then protects the Sheriff against all damages and costs in consequence of the levy or sale. T.C.A. 26-3-104. Protection extends only to disputes based on the claim of a third party and does not include the defendant's objections that the property is exempt from execution, the execution is void, and so forth. *Baker v. Agee, 21 Tenn. 13 (1840); Hunter v. Agee, 24 Tenn 57 (1844)*.

The most efficient way to address this issue is for the plaintiff's attorney to sign the indemnity bond, which requires no fee at the time the levy order is sought. The plaintiff cannot be required to give an indemnity bond in advance. However, if none is given and a dispute over ownership of the property arises when the deputy goes to execute the levy, the deputy should suspend further action until the bond is given. (Emphasis added).

In the meantime the judgment debtor may use the delay to remove, transfer, or abscond with the property designated for levy. It is unlikely the Sheriff can spare personnel to wait at the scene for a bond to be given that may never actually arrive. The simple form below, adopted from a form used in Chancery Court for Knox County, is found at 16 Tenn. Prac., Debtor-Creditor Law and Practice Section 19.04 (2005). The Sheriff can perhaps enlist cooperation from the Clerk's Office to make it easily available to the plaintiff's attorney at the location where the levy order is filed.

I request that my execution be issued without my giving an indemnity bond in advance.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judgment Creditor or Attorney

\_\_\_\_\_  
Phone

## INDEMNITY BOND OF PLAINTIFF: T.C.A. 26-3-104

Case No. \_\_\_\_\_ Levy on Property of \_\_\_\_\_  
( ) Circuit Court      ( ) General Sessions Court

We, the attorney for the judgment creditor and surety, indemnify the Sheriff of \_\_\_\_\_ County, Tennessee, and all the Sheriff's Deputies, and all and every person aiding the Sheriff in the premises, from harm, loss, damages, cost, suits, judgments and executions, that may at any time arise or be brought against the Sheriff or any of them for the levy or sale and that we shall pay any judgment that may be obtained against the Sheriff or any of them by virtue of the levy or sale.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judgment Creditor or Attorney

\_\_\_\_\_  
Phone

<sup>i</sup> Excerpt from the Tennessee Sheriff's Handbook, May 2006, prepared by Stephen W. Austin, Legal Consultant, The University of Tennessee County Technical Assistance Service.