

TITLE 4. CIVIL PROCEDURE

Chapter 4.5

POST-TRIAL PROCEDURES

Sections:

- 4.5.1 Costs in Civil Actions.
- 4.5.2 Writ of Execution on IIM Account.
- 4.5.3 Judgments and Decedent's Estates.
- 4.5.4 Execution of Judgment.
- 4.5.5 Judgment and Renewal of Judgment.
- 4.5.6 Writ of Execution.
- 4.5.7 Return of Writ.
- 4.5.8 Appraisal.
- 4.5.9 Posting of Notice.
- 4.5.10 Time of Sale.
- 4.5.11 Sale of Property.
- 4.5.12 Expenses and Costs.
- 4.5.13 Bill of Sale.
- 4.5.14 Failure to Sell at Public Sale.
- 4.5.15 Delivery of Property if No Sale.
- 4.5.16 Return of Property.
- 4.5.17 Nonexempt Property.
- 4.5.18 Exempt Property.
- 4.5.19 Retention of Property by Judgment Debtor — On Bond or Approval of Judgment Creditor.
- 4.5.20 Homestead Exemption — Definition.
- 4.5.21 Automatic Homestead Exemptions.
- 4.5.22 Homestead Presumed Abandoned.
- 4.5.23 Homestead Exemption — When Not Available.
- 4.5.24 Challenge to Homestead Exemption — How to Claim.
- 4.5.25 Interest on Judgment.
- 4.5.26 Satisfaction of Judgment.

4.5.1. Costs in Civil Actions. The Court may assess the costs of the case against the party or parties against whom judgment was given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible, the fees of jurors in those cases where a jury is had, and any further incidental expenses or fees connected with the proceedings before the Court, as the Court may direct. (Prior code Ch. IV, Art. III, §5: Res. 122 §7.5, passed Dec. 18, 1972; amended by Res. 94-154 (part), passed Oct. 10, 1994)

4.5.2. Writ of Execution on IIM Account. Whenever the Court shall have ordered payment of money damages to a prevailing party and the judgment debtor refuses to make such payment within the time set for payment by the Court, and at such time as

the judgment debtor has sufficient funds to his credit in excess of those specified in §4.5.18 at the agency office to pay all or part of such judgment, and if the judgment debtor has filed an affidavit of exemption as required under §4.5.18, the Superintendent, pursuant to federal law, upon service of judgment by the Court, shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the prevailing party the amount of the judgment, or such lesser amount as may be specified by the Secretary, from the account of the delinquent party. (Prior code Ch. IV, Art. III, §6: Res. 122 §7.6, passed Dec. 18, 1972; amended by Res. 94-154 (part), passed Oct. 10, 1994)

4.5.3. Judgments and Decedent's Estates. A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Court to distribute a decedent's estate. (Prior code Ch. IV, Art. III, §7: Res. 122 §7.7, passed Dec. 18, 1972: amended by Res. 94-154 (part), passed Oct. 10, 1994)

4.5.4. Execution of Judgment. Any judgment of the Court requiring the payment of money or the delivery of real or personal property may be enforced by execution. When a judgment of the Court requires the performance or forbearance of any other act, a certified copy of the judgment may be served upon the liable party or upon the person or officer who is required by the judgment or by law to obey the same, and a writ may be issued commanding the person or officer to obey or enforce the judgment. Refusal to do so may be punished by the Court as contempt. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.5. Judgment and Renewal of Judgment. The party in whose favor a money judgment is given by the Suquamish Tribal Court may at any time within six (6) years from the entry of judgment apply for a writ of execution to enforce judgment. Prior to the expiration of the six-year period, the judgment creditor, upon motion and for good cause, may renew the judgment for an additional period up to six (6) years. The judgment creditor may obtain as many writs of execution as are necessary to effect collection of the entire amount of the judgment. The application for writ shall specify which property is to be levied upon. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.6. Writ of Execution. (a) A writ of execution shall be issued in the name of the Suquamish Tribe, sealed with the seal of the Court, and subscribed by the clerk of the court and directed to the Tribal or Bureau of Indian Affairs Police or to the party seeking execution. The writ shall direct the party to whom it is addressed to levy upon sufficient unrestricted and nonexempt property of the judgment debtor to pay the judgment and costs of sale. The writ of execution shall refer to the judgment, including the names of the parties, the amount of the judgment, and if it be for money, the amount actually due thereon, and list the particular property to be levied upon. If the judgment has been recorded, the writ shall so indicate and shall state the time and place of docketing or recording and the recording number.

(b) Before an execution is delivered on a judgment of the Court, the amount of the judgment, including court costs, shall be entered in the docket and upon the back of the execution, and reasonable costs and reasonable attorneys' fees incurred by the judgment creditor in seeking enforcement of the judgment.

(c) A writ shall require substantially as follows:

(1) If the execution is against the property of the judgment debtor, it shall require the officer or other person executing the writ to satisfy the judgment out of the personal property of the debtor first, unless an affidavit of exemption has been filed with the Court pursuant to §4.5.21 and there is not sufficient nonexempt personal property to satisfy the judgment, the writ shall require that the unsatisfied portion of the judgment be satisfied out of the real property of the debtor.

(2) If the execution is against real or personal property in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, it shall require that the judgment be satisfied out of such property.

(3) If the execution is for the delivery of real or personal property, it shall describe the property and state its value and require the officer or other person executing the writ to deliver possession of it to the party entitled thereto and may, at the same time, require the satisfaction of any charges, damages, or rents and profits recovered by the same judgment out of the personal property of the party against whom it was rendered. If the property described in the execution cannot be delivered and if sufficient personal property cannot be found to satisfy the judgment, it shall be satisfied out of the real property of the party against whom the judgment was rendered.

(4) If the execution is to enforce obedience to an order, it shall particularly command what is required to be done or to be omitted.

(5) If the nature of the case requires it, the execution may embrace two or more of the requirements of this section.

(6) In all cases the execution shall require the collection of all interest, costs, and increased costs thereon. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.7. Return of Writ. Within thirty days of receipt of the writ of execution, the police or the party seeking execution shall return the writ to the clerk of the court with an inventory of the property levied upon or with a written explanation of why the property has not been levied upon as specified in the writ. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.8. Appraisal. The following property shall require appraisal: vehicles, real property, and personal property which the officer or person levying reasonably believes to be of

the value of five hundred dollars (\$500) or more. Within ten (10) days after levy upon property under a writ of execution, any property required by this code shall be appraised by a disinterested party selected by the chief of police or absent such selection by the judgment creditor. Appraisal by such disinterested party must be made within five (5) days of receipt of appointment. Such appraisal shall be made under oath to make a just and true appraisal and shall be returned to the chief of police, the judgment creditor, the judgment debtor, and the person in control of the property at the time of levy, if different than the judgment debtor. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.9. Posting of Notice. Within seven (7) days after the property is levied upon by a writ of execution or within seven (7) days of the return of the appraisal, the chief of police shall post at the Suquamish Tribal Center or at least one prominent and public place on the Port Madison Indian Reservation and cause to be published once a week for two (2) consecutive weeks in the *Kitsap Sun* or in a newspaper of local circulation notices of sale containing a description of the property to be sold, together with the appraised value of each item of a value of five hundred dollars (\$500) or more, and the time and place of sale. A copy of the notice shall be served upon the judgment debtor and the person who was in control of the property at the time of levy, in the manner of a civil summons. The notice shall inform the judgment debtor that he or she may have rights to claim exemptions and shall attach a form for such claim. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.10. Time of Sale. The sale shall be held not less than ten (10) nor more than twenty (20) days after the posting and service of notice pursuant to §4.5.9. The sale shall be conducted at a convenient time and location described in the notice. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.11. Sale of Property. The chief of police, his or her agent, or the judgment creditor, shall sell the property publicly to the highest bidder for cash, but appraised property shall not be sold for less than eighty percent (80%) of the appraised price. The property may be sold item by item or in bulk at his or her discretion, provided it shall not be commingled with nonappraised property in a bulk sale. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.12. Expenses and Costs. All proceeds of sale shall be paid into the Court within ten (10) days of the sale. The Court shall then reimburse costs of sale to the seller, the party levying, or their agent with the balance paid to the creditor up to the amount of the judgment. Any excess proceeds remaining shall be paid to the judgment debtor. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.13. Bill of Sale. The seller shall deliver a bill of sale to the buyer. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.14. Failure to Sell at Public Sale. If the property has not been sold at public sale in accordance with §4.5.11, the property not appraised shall be returned to the judgment debtor or person in whose hands it was prior to levy. The chief of police may hold the

appraised property for fourteen (14) days after the date of the attempted sale, during which time he or she shall sell it to the first person offering eighty percent (80%) of the appraised value in cash. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.15. Delivery of Property in Event of No Sale. The chief of police, at any time within the fourteen-day period following an unsuccessful sale, upon request of the judgment creditor and payment of all costs, may deliver appraised property to the judgment creditor and credit the appraised value thereof against the judgment debt. If the appraised value is greater than the debt, the property shall not be delivered to the judgment creditor until the judgment creditor pays the judgment debtor in cash for the excess value. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.16. Return of Property. At the end of fourteen (14) days if the property remains unsold and unclaimed by the judgment creditor, the property shall be returned to the judgment debtor. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.17. Nonexempt Property. Except as provided in §4.5.18, all real and personal property of the judgment debtor, not including land held in trust by the United States or subject to restriction against alienation under federal law, shall be subject to execution, including any property transferred by the judgment debtor for the purpose of defrauding the judgment creditor, where the transferee knew or should have known of such purpose at the time of the transfer. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.18. Exempt Property. (a) The judgment debtor may claim as exempt from levy and execution property within the following categories: tools, equipment, or materials used in a business up to five thousand dollars (\$5,000); clothing, keepsakes, mementoes, and library up to one thousand and five hundred dollars (\$1,500); up to two (2) vehicles, not to exceed a combined maximum value of five thousand dollars (\$5,000); one (1) cooking stove, one (1) refrigerator, one (1) wood stove, one (1) telephone, and necessary medical equipment or supplies of any value; casualty insurance proceeds on exempt property for up to ninety (90) days after the claim is paid; disability benefits of any amount; and other personal property with a combined maximum value of one thousand and five hundred dollars (\$1,500), of which not more than two hundred and fifty dollars (\$250) shall be cash, deposits in a checking account, demand instruments, or other cash equivalents.

(b) Levy or execution upon an individual judgment debtor may only be upon the separate property of the judgment debtor spouse or, if married, only upon the judgment debtor's interest in any community property and not on the spouse's separate property; provided where the judgment is for the purchase price or rents due upon the property levied upon, there is no exemption.

(c) Intangibles, such as but not limited to stock certificates, damage claims, and accounts receivable, may be levied upon by serving a copy of the writ on the judgment debtor together with a description of the property. If the property is a claim on which

suit has been commenced, a copy of the writ and of the description shall also be filed with the clerk of the court in which the suit is pending.

(d) In addition to the personal property exemption above, there is exempted from levy and execution any materials, equipment, supplies, or clothing used for the enjoyment of and/or in the exercise of the judgment debtor's rights guaranteed by treaty. The exemptions in this section shall not apply to property which is subject to lien or security interest which has been perfected as required by the laws of the State of Washington or of the state or Indian Nation wherein the debt was contracted.

(e) All traditional, cultural, and religious items, including regalia, are further exempted from execution of judgment and may not be attached for any debt.

(f) Homestead, as defined in §4.5.20. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.19. Retention of Property by Judgment Debtor — On Bond or Approval of Judgment Creditor. After levy of execution on personal property, the police or judgment creditor may permit the judgment debtor to retain possession of the property or any part of it until the day of sale, if the debtor executes a written bond to the police with sufficient surety in double the value of such property to the effect that it shall be delivered to the police with the time and place of sale; and upon nondelivery thereof, an action may be maintained upon such bond by the police or the judgment creditor for judgment against the surety on the bond for the balance remaining due, upon motion supported by affidavit, that the property has not been delivered and the judgment remains unpaid and stating the amount unpaid. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.20. Homestead Exemption — Definition. A homestead may consist of real or personal property of which the judgment debtor is the owner and which he or she uses as a residence.

(a) A mobile home and any dwelling house located on leased land may be exempted as a homestead under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for its owner and will include appurtenant buildings and the land on which the same are situated and surrounded or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon.

(b) An "owner" shall include a purchaser under a deed of trust, mortgage, or real estate contract.

(c) "Net value" means market value, less liens and encumbrances.

(d) A homestead may consist of community or jointly owned property of spouses or the separate property of either spouse or any of the property of an unmarried person.

(e) The homestead may consist of property with a net value not exceeding thirty thousand dollars (\$30,000) if it includes real property or fifteen thousand dollars (\$15,000) in the case of mobile homes or other personal property intended for and used as the owner's principal home. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.21. Automatic Homestead Exemptions. (a) Property described in §4.5.20 constitutes a homestead and is automatically protected by the exemption described in §4.5.18 from and after the time the real property is occupied as a principal residence by the owner.

(b) Any property not qualifying for an automatic exemption shall qualify as a homestead only if the owner executes a declaration of homestead and files the same for record in the office of the court clerk or some other office designated by this code.

(c) The declaration of homestead must contain:

- (1) A statement of declaration;
- (2) A legal description of the property; and
- (3) An estimate of the actual cash value.

(d) If a homestead has been abandoned, a declaration of abandonment shall be filed with the court clerk. A declaration of abandonment must contain:

- (1) A statement that the premises occupied as a residence or claimed as a homestead no longer constitutes the residence or homestead;
- (2) A legal description of the premises; and
- (3) A statement of the date of abandonment.

(e) The declaration must be acknowledged in the same manner as a grant of real property is acknowledged. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.22. Homestead Presumed Abandoned. There is a presumption of abandonment of homestead if the owner vacates the property as to which a declaration of homestead has been filed for a continuous period of one (1) year, unless the owner files a declaration of nonabandonment which must contain:

(a) A statement that the owner:

- (1) Claims the property as a homestead;

(2) Intends to occupy the property in the future; and

(3) Has no other homestead;

(b) Where the owner will be residing during the absence;

(c) The estimated duration of the absence and the reason therefor; and

(d) A legal description of the property which must be filed as required in §4.5.21. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.23. Homestead Exemption — When Not Available. A homestead exemption other than an automatic exemption is not available:

(a) Unless any declaration thereof is executed and acknowledged by both husband and wife;

(b) To the extent that the claimed exemption exceeds the value of the exemption allowed;

(c) With regard to debts secured by a mechanic, laborer, construction, maritime, automobile repair, materialmen, or vendor lien arising out of and against the particular property claimed as a homestead;

(d) For debts secured by security agreement, mortgages, or deed of trust describing the property claimed that has been executed and acknowledged by the husband and wife or any unmarried claimant;

(e) Debts arising from a lawful tribal court order for child support; or

(f) Debts secured by a condominium or homeowner's lien. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.24. Challenge to Homestead Exemption — How to Claim. (a) In the event a judgment creditor believes a claim is incorrect as to any property, the creditor may request an appraisal of such property, and the excess, if any, will be paid to the creditor after sale.

(b) Such request must be made within five (5) days of receipt of a copy of the claim for exemption made by the judgment debtor and be filed with the clerk of the court with a copy to the judgment debtor and the chief of police. The clerk will schedule a hearing within five (5) days of the request with notice to both parties. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.25. Interest on Judgment. A judgment shall earn interest at the prime rate from the date of entry of judgment until paid. (Res. 94-154 (part), passed Oct. 10, 1994)

4.5.26. Satisfaction of Judgment. A judgment may be satisfied, in whole or in part, by the owner thereof or his attorney or representative executing under oath and filing an acknowledgment of satisfaction specifying the amounts paid and whether such is in full or partial satisfaction. A judge may order the entry of partial or full satisfaction of judgment upon proof of payment and failure of the judgment creditor to file a satisfaction. (Res. 94-154 (part), passed Oct. 10, 1994)

Note: The following subsections renumbered for consistency.

4.5.6(1) changed to 4.5.6(a); 4.5.6(2) to 4.5.6(b); 4.5.6(3)(a)-(f) to 4.5.6(c)(1)-(6)
4.5.20(1)-(5) changed to 4.5.20(a)-(e)
4.5.21(1) changed to 4.5.21(a); 4.5.21(2) to 4.5.21(b); 4.5.21(3)(a)-(c) to 4.5.21(c)(1)-(3);
4.5.21(4)(a)-(c) to 4.5.21(d)(1)-(3); 4.5.21(5) to 4.5.21(e)
4.5.23(1)-(6) changed to 4.5.23(a)-(f)
4.5.24(1)-(2) changed to 4.5.24(a)-(b)