

NORTHERN TERRITORY OF AUSTRALIA

SHERIFF REGULATIONS

As in force at 14 March 1984

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NORTHERN TERRITORY OF AUSTRALIA

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SHERIFF REGULATIONS

Regulations under the *Sheriff Act 1962*

1 Citation

These Regulations may be cited as the *Sheriff Regulations*.

2 Definition

In these Regulations ***the Master*** means the Master of the Court and includes a Deputy Master of the Court.

3 Publicity of sale

Where the sheriff intends to put up for sale any property taken in execution, he shall cause notice of the time and place and particulars of the property to be given at least 14 days prior to the date of the intended sale in such manner as appears to him best calculated to give publicity to such sale.

4 Place of sale

The sheriff shall cause any property taken in execution to be sold at the place of levy, or elsewhere, as he deems most advantageous.

5 Mode of sale

- (1) Unless the Court or a Judge otherwise directs, all property real or personal taken in execution shall be offered for sale by the sheriff by public auction, and, unless directed as aforesaid, shall not be offered for sale in any house or premises licensed for the sale of liquor or registered for betting.
- (2) The property may be sold in one lot or in several lots.
- (3) Unless the Court or a Judge otherwise directs, every sale shall be for cash on delivery, conveyance, assignment or transfer.
- (4) Subject to subregulation (5), a sale shall be of the estate, right, title or interest only of the party against whom the writ of execution has been issued in the chattels or land put up for sale.

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- (5) With the consent in writing of any other person having any estate, right, title, or interest in the chattels or land, the sale may be also of the estate, right, title or interest of that other person if:
- (a) the sheriff is of opinion that such a course is desirable in order to obtain a more satisfactory sale under the writ; and
 - (b) that other person and the judgment creditor and the judgment debtor have agreed in writing upon the proportion in which the net proceeds of the sale are to be divided.

6 Payment over by sheriff in certain cases

In a case not within section 93 of the *Bankruptcy Act 1924-1965* when the sheriff, by virtue of any writ directed to him, receives any moneys, he shall pay them on demand to the party entitled to receive them, or his solicitor, deducting from the moneys all lawful charges, whether the writ is then returnable or not, unless he has received notice to retain the moneys from some person claiming to be interested in them.

7 Notice to sheriff not to pay money to execution creditor

- (1) Where the sheriff has, by virtue of any writ directed to him, received any moneys, and any person claiming to be interested in them has served on the sheriff a notice requiring him not to pay them over, the sheriff may retain the moneys in his hands, to abide the order of the Court or a Judge thereon.
- (2) The sheriff may, at the expiration of 4 days next after service of such a notice on him, pay over such moneys in pursuance of the writ, unless in the meantime application is made by the party giving the notice to the Court or a Judge, and notice thereof is served on the sheriff.

8 Suspension of execution

- (1) The sheriff shall not suspend the execution of any writ or process directed to him, except upon an absolute order in writing to that effect lodged with him by the person entitled to the benefit of the execution, or his solicitor.
- (2) Any such person may at any time afterwards withdraw such an order, and lodge with the sheriff a written instruction to execute the writ or process.

9 Persons arrested to be lodged in nearest gaol

When any person has been arrested by the sheriff on any civil process of the Court, he shall be lodged in the gaol nearest to the place of his arrest, and, subject to any order by the Court or a Judge, he shall be detained there until discharged in due course of law.

10 Service of process by sheriff

- (1) The sheriff shall, if requested so to do by any party or his solicitor, serve or cause to be served in the Northern Territory any writ, notice, order, summons or other document issued, made or prepared in or in relation to any cause or matter in respect of which personal service is required by law or by the practice of the Court.
- (2) Such a request shall be in writing and shall contain the instructions for service.
- (3) The service of such a document may be proved by the affidavit of the bailiff or officer effecting service, and no subpoena to compel the attendance of the sheriff or any bailiff or officer in respect of any matter arising out of the service shall be issued except by leave of a Judge or the Master, which may be obtained ex parte.

11 Fees where sheriff does not execute process

Where process is directed to any fit person appointed by the Court or a Judge pursuant to section 12 of the Sheriff Act, the fees payable in ordinary cases to the sheriff by the person against whom the process is sued out shall be due and payable to the person suing out such process, except the fees for registering the warrant and returning it.

12 Taxation of fees

The amount of any fees or charges payable to the sheriff shall be taxed by the Master in case the sheriff and the person liable to pay the fees or charges differ as to that amount.

13 Expenses of sale

Where property taken in execution is sold through an auctioneer or agent, the gross proceeds of the sale shall, if the sheriff so requires, be paid over to him by the auctioneer or agent, and the sheriff shall after receiving them, or, in case the sheriff and the person liable to pay the fees and charges payable to the sheriff in respect of the execution differ as to the amount of the fees and charges, after the fees and charges have been taxed, pay to the auctioneer or agent the proper charges and expenses due to him in connection with the

sale.

14 Deposits on account of fees

- (1) Upon request being made for the execution or service of any process or document, or for any work for which fees are properly chargeable in the sheriff's office, the sheriff may require a deposit of money in respect of the fees for the execution, service, or work and an undertaking in writing to pay any further fees which may become payable beyond the amount so deposited.
- (2) Where any person has deposited an amount in excess of the fees which are found to be payable, the sheriff shall, upon the amount actually payable being ascertained, return the amount so deposited in excess.

15 Fees where execution not proceeded with

Where an execution is withdrawn, satisfied, or stopped, the fees payable in respect of the execution shall be paid by the person issuing the execution, or the person at whose instance the sale is stopped, as the case may be.

16 Particulars of arrangement where execution discontinued

Where execution has been levied upon any property and the sheriff upon request has withdrawn from the property, the poundage upon the full amount which the sheriff has been required to levy under the writ of execution lodged with him shall become forthwith due and payable by the execution creditor or his solicitor, as the case may be, unless an arrangement which renders the sale unnecessary has been reached between the execution creditor and the execution debtor or a person on behalf of the execution debtor and full particulars of the arrangement have been furnished to the sheriff within 14 days of the making of the arrangement.

17 Service at a distance

No officer of the sheriff shall be compellable to go more than 60 kilometres by the shortest route usually used to travelling from his office or residence for the service of any writ of summons, notice, order, summons or other document, nor shall more than 160 kilometres of the number of kilometres travelled be allowed in any case without the order of a Judge or the Master.

18 Execution of process at a distance

- (1) No greater expense shall be chargeable against any party, respecting whom or whose property the execution of process is made, for the extra cost of executing the process at a distance from

Darwin, than the cost of transmitting the process by the least expensive mode to and from the office or residence of the officer of the sheriff nearest to the place where the execution is made and the number of kilometres travelled according to the distance of the place where the execution is made from the office or residence of that officer of the sheriff.

- (2) No number of kilometres travelled shall be allowed under subregulation (1) to any officer of the sheriff unless he states in his return to the sheriff the number of kilometres that the place of execution is from his office or residence.

19 Default in payment of fees by solicitor

If any solicitor, who has made a request for the execution or service of any process or document, or for any work for which fees are properly chargeable in the sheriff's office, makes default in payment of any of the fees or charges properly chargeable, for a period of 7 days after demand in writing by the sheriff, the sheriff may report to the Court or a Judge the name of the solicitor so making default, and the Court or Judge may thereupon make all necessary orders to enforce payment of the fees or charges, and the sheriff may, with the consent of the Attorney-General, commit to the Crown Law Officer the matter of enforcing the orders.

20 Notice to sheriff to return writ, &c.

No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing a writ or obtaining an order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the sheriff to return the writ or to bring in the body within a given time, if not complied with, shall entitle the last mentioned person to apply for an order for the committal of the sheriff.

21 Notice to ex-sheriff to bring in body

When a sheriff being going out of office, arrests a defendant and renders a return of cepi corpus, but does not on ceasing to be sheriff transfer the custody of the defendant to the incoming sheriff, he may be called upon by a notice under regulation 20 to bring in the body within the time allowed by law, although he may be out of office before the notice is given.

22 Fees

The fees set out in the Schedule are payable to the sheriff in respect of the matters set out in that Schedule.

The Schedule

Fees to be taken in the Sheriff's office

	\$
1. (a) Receiving and entering any writ of execution or Judge's order and (where necessary) issuing warrant on same	10
(b) Where warrant is issued to a person appointed under section 12 of the Act an additional	5
2. Receiving and entering any writ of summons, notice, order, summons, or other document for service, each copy	10
3. (a) For service of every writ of summons, notice, order, summons, or other document	10
(b) And for the number of kilometres travelled on service where the distance from the sheriff's office or the bailiffs office or residence is over one kilometre for each extra kilometre (one way)	0.30
4. For every arrest made within one kilometre of the sheriff's office or the bailiff's office or residence	25
5. For conveying the defendant to gaol from place of arrest the amount actually and reasonably incurred, including refreshments where absolutely necessary	
6. Executing any warrant or other process of execution if the distance from the sheriff's office or bailiff's office or residence does not exceed one kilometre	15

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| 7. | The number of kilometres travelled on making each arrest, or executing each warrant or other process, where the distance from the sheriff's office or the bailiff's office or residence is over one kilometre for each extra kilometre (one way) | 0.30 |
| 8. | Where more than one process or document is to be executed or served at the same time on the same person, or on different persons in the same locality, one-half only of the fees for the number of kilometres travelled provided by Fees Nos. 3(b) and 7 shall be paid or allowed. | |
| 9. | Bailiff's assistants – when necessary, the amounts actually and reasonably incurred. | |
| 10. | (a) For work done by the sheriff's officer in making inquiries as to claims for rent or to the goods, including copying claims and giving the necessary notice to all parties, a sum not exceeding | 10 |
| | (b) And for all out-of-pocket expenses actually and reasonably incurred in relation to such work, including postage, telegraphic and telephonic messages, a further sum not exceeding | 10 |
| 11. | (a) For poundage on executing every writ of execution on lands, goods, chattels, or moneys on the amount levied | .05 for every \$1 |
| | (b) For poundage on every writ of possession, on the annual value of the property seized | |

12.	For returning any writ of execution on or matter of the like nature, exclusive of the fee paid for filing	5
13.	On every supersedeas order, or discharge to any writ or process, or for the release of any defendant out of custody in any action, or of goods taken in execution	10
14.	For commission to the auctioneer or agent on sale by auction or private contract (to include inventory, valuation, and compiling catalogue and preparing for sale):	
(a)	On sale of goods and chattels	10% on amount realized
(b)	On sale of land (including chattel interest in land):	
(i)	on the first \$10,000	6% or \$25, whichever is the greater amount
(ii)	on an amount in excess of \$10,000 but not exceeding \$50,000	4%
(iii)	on any amount in excess of \$50,000.	3%
15.	For auctioneer, if instructed to sell, but no sale takes place either by auction or by private contract:	
(a)	If sale cancelled after advertisement, a sum not exceeding	25
(b)	If sale cancelled after advertisement and lotting and actual preparation of goods for sale has commenced, an additional fee of	10

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|-----|--|---------------------------------------|
| (c) | If sale cancelled after advertising and lotting and actual preparation of goods for sale has commenced and in case of large and complicated sale involving a special amount of organization an additional fee not exceeding. | 25 |
| (d) | Offering fee on property being passed in, a sum not exceeding | 25 |
| 16. | Where a sale takes place by auction or private contract, or when no sale takes place: | |
| (a) | For advertising and giving publicity to any sale or intended sale, printing catalogues and bills, and distributing and posting the same | The sums actually and reasonably paid |
| (b) | For labour (if any) employed in letting and showing goods or chattels, preparing catalogue and where a sale takes place by auction, attending the sale and superintending the removal of goods or chattels by purchasers | The sums actually and reasonably paid |
| (c) | For auctioneer's travelling expenses, if goods or land for sale are situated beyond 7 miles from his place of business, the sums actually and reasonably paid in respect of the distance beyond the first 10 kilometres, or if the auctioneer used his motor car or motor cycle, and provided such use was reasonable, an allowance not exceeding 10¢ a kilometre beyond the first 10 kilometres | The sums actually and reasonably paid |

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|-----|---|---------------------------------------|
| 17. | (a) Where goods or animals or other livestock have been removed for warehousing or taking charge of same | The sums actually and reasonably paid |
| | (b) For keep of animals or other livestock whilst in the custody of the sheriff, whether before or after removal | |
| 18. | Out of pocket expenses incurred by bailiff or officer whilst executing any process, including postage and telegraphic and telephonic messages, and travelling expenses of assistants | The sums actually and reasonably paid |
| 19. | Where an officer is required to attend the Court in charge of a prisoner ordered to attend for examination pursuant to a Judge's order, the reasonable travelling and other expenses of the officer and prisoner for each day or part of a day when the officer is necessarily engaged | |
| 20. | Keeping office open after hours | 25 |
| 21. | For any duty or service not herein provided for, such sum as the Master may, upon special application, allow. | |
| 22. | In any case where the sheriff, sheriff's officer, bailiff, or other person employed under the sheriff shall be necessarily put to and incur extra trouble and expense in the discharge of any duty incident to his office or employment, he shall be entitled to such reasonable extra payments as the Master may, upon special application, allow. | |

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Sheriff Regulations (SL No. 1, 1967)***

Notified	15 February 1967
Commenced	15 February 1967

Amendment to the Sheriff Regulations (SL No. 25, 1967)

Notified	6 December 1967
Commenced	6 December 1967

Amendments of the Sheriff Regulations (SL No. 8, 1984)

Notified	14 March 1984
Commenced	14 March 1984

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by section 11 of the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to the following provisions: rr 5, 7, 11, 16, 17, 18, 19, 21, 22 and sch.

4 LIST OF AMENDMENTS

r 3	amd No. 25, 1967, r 1
r 17	amd No. 8, 1984, r 1
r 18	amd No. 8, 1984, r 2
sch	sub No. 8, 1984, r 3