Seven years ago, PA 92-817 created a new standard procedure for reviving judgments. This Act added a new provision to the Illinois Code of Civil Procedure, 735 ILCS 5/2-1602, which combined provisions that had previously been scattered throughout the Code of Civil Procedure and remedied defects existing under the old procedure for reviving judgments.

On August 11, 2009, PA 96-305 further clarified the process. First, the August act provided that a petition may be “filed” during the seventh year or at any time thereafter. Before that, the statute said that a judgment may be “revived” during the seventh year. Using the word “filed” rather than “revived” seems to have cleared up any remaining confusion over whether it was mandatory to revive a judgment before it expired (that was never the case). Second, the wording of the statute of limitations was revised to make clear that the judgment need not be revived within 20 years but a petition must be filed within 20 years.

In Illinois, a judgment is valid forever. However, judgments may only be enforced for seven years from the date of the entry of judgment or the date of the judgment’s last revival. A judgment need not be revived before it becomes dormant, but once dor-

1. 735 ILCS 5/12-108(a); First Natl Bank of Marengo v. Loffel-machler, 236 Ill App 3d 690, 603 NE2d 80 (2d D 1992); Aetna Cas & Sur Co v Brunsman, 77 Ill App 2d 219, 222 NE2d 527 (5th D 1966).
of scire facias.

The most prominent of these provisions was a requirement that a judgment be revived against all judgment debtors in the original action, which in turn required service on all judgment debtors in the revival action. This was true regardless whether the creditor wished to enforce the judgment against all debtors, or whether a given debtor held an interest in property against which a judgment lien had previously been recorded. If a judgment creditor was unable to locate and obtain service on all parties to the original action, the judgment could not be revived. This provision worked a great hardship upon creditors who were unable to locate all parties to the original case and whose judgment lien had previously been recorded.

Accordingly, properly revive a judgment to maintain the attachment and seniority of the judgment lien is of great importance. However, prior law was unclear about when and how a judgment could be revived. Further, the procedure that had evolved over the previous 70 years contained a number of unwieldy provisions that were legacies of the common law writ of scire facias.

The only defenses which can be set up in a scire facias proceeding are that no judgment was rendered, but if one was rendered that it had not been discharged. When a court granted a revivor, the order typically recited that the plaintiff was entitled to execution on the judgment pled in the scire facias. The Illinois Supreme Court explained the purpose of this procedure many years ago in Waterbury National Bank v Reed, where it held as follows:

The purpose of the more recent law governing revivals was to clarify the revival process. It does so by specifying the required elements of the revival petition and setting forth a single procedure governing the timing and service of the petition and the continuation of judgment liens following revival.

This article describes the old law of revival of judgments and problems that arose under it, then explains how the newer law addresses those problems. It also describes how the revival process works under current law.

Background

At common law, judgments were revived through the common law writ of scire facias. That writ was issued by the court in which the original judgment was entered, reciting the judgment and praying that the defendant show cause why a revivor should not be granted and execution issued thereon.

The writ of scire facias required an affidavit reciting the existence of and details regarding the prior judgment. Under early Illinois law, where a party delayed execution on a judgment and allowed it to become dormant, a legal presumption was raised against the judgment’s continued validity, and a party seeking to revive the judgment had the burden of rebutting this presumption.

As part of this burden, the party seeking revival was required to plead that the judgment has not been satisfied, note what payments had been made, and state that the judgment had not been discharged. When a court granted a revivor, the order typically recited that the plaintiff was entitled to execution on the judgment pled in the scire facias.

The Illinois Supreme Court explained the purpose of this procedure many years ago in Waterbury National Bank v Reed, where it held as follows:

The purpose of the more recent law governing revivals was to clarify the revival process. It does so by specifying the required elements of the revival petition and setting forth a single procedure governing the timing and service of the petition and the continuation of judgment liens following revival.

This article describes the old law of revival of judgments and problems that arose under it, then explains how the newer law addresses those problems. It also describes how the revival process works under current law.

Robert G. Markoff is a partner in Markoff & Krasny in Chicago. He is past chair of the ISBA Commercial, Banking & Bankruptcy Section Council and primary author of 735 ILCS 5/2-1602. Christopher McGeehan practices with McGeehan Technology Law, Ltd in Chicago, where he focuses on intellectual property, information technology and commercial litigation matters. The authors thank Charles J. Prochaska, a third year student at Chicago Kent College of Law, for his assistance.
ingly, a party could not begin a writ of scire facias and then switch to a statutory action with complaint and summons. During this period of alternate remedies, the statutory method came to dominate revival practice. By 1980, the writ of scire facias was considered “a proceeding seldom seen in recent times and considered by many practitioners to be somewhat of an antique curiosity.”

In 1982, Illinois abolished all writs, including the writ of scire facias, as part of the creation of the modern Code of Civil Procedure. In so doing, the legislature added 735 ILCS 5/2-1601, which nonpayment of child support revived a judgment.

Through all the procedural changes in the law, the substantive law governing defenses remained constant. As stated by Waterbury a century ago, there are two primary defenses to a revival proceeding: payment or discharge. The debtor could also assert that no judgment was entered in the original proceeding or that the original judgment was void due to lack of personal jurisdiction in the original proceeding. In addition, he or she could assert that the original judgment was void under the doctrine that a void judgment can be attacked at any time without limitation.

However, Illinois precedent is inconsistent regarding the procedure for addressing an assertion of lack of jurisdiction in the original proceeding when raised as a defense to revival. Several decisions have suggested that the judgment should be revived subject to a ruling on jurisdictional defect. Others suggest that the jurisdictional issue should be reviewed prior to granting the revival.

The Illinois Supreme Court was faced with this situation in the 2002 case Sarkissian v Chicago Board of Educa,

where the plaintiff filed a petition for revival of a $7 million default judgment entered against the board of education nine years earlier. The board opposed the petition, arguing that the original trial court never had personal jurisdiction because the original action was served upon a person not statutorily authorized to accept service of process.

The board argued that the original judgment was therefore void, because the trial court lacked personal jurisdiction over it. Rather than ruling on whether to grant the revival, the trial, appellate, and supreme courts addressed the jurisdictional argument on the merits first. None of these decisions went on to describe whether jurisdiction or revival should be considered first.

While Justice Freeman’s concurrence noted that the proper procedure would have been to revive the judgment first and then address the collateral attack upon the judgment, the majority’s resolution of the case arguably suggests that collateral attacks against the original judgment should be considered before revival of the judgment.

The statute for revival of judgments removes defects in the revival procedure carried over from the common law of scire facias and codifies existing case law. states as follows: Scire facias abolished. Any relief which heretofore might have been obtained by scire facias may be had by employing a petition filed in the case in which the original judgment was entered and notice shall be given in accordance with rules.

The failure of the legislature to prescribe a particular method led to varying decisions about the proper method of reviving a judgment. Under the procedure that existed between 1982 and 2002, the standard method of obtaining revival was through a petition filed in the original case. This petition was to be served pursuant to Supreme Court Rule 106, which governed service of petitions to revive judgments. Supreme Court Rule 106 took its method of service from Supreme Court Rule 105 (which governs service of pleadings seeking additional relief) and required personal service, service by certified or registered mail restricted delivery, or service by publication.

However, some parties continued to file a new action to revive a prior judgment. To further complicate matters, a line of cases arose in the fourth district holding that a petition for contempt for

16. Id.
17. J. D. Court, Inc v Investors Unlimited, Inc, 81 Ill App 3d 131, 133, 400 NE2d 1083, 1084 (4th D 1980).
18. PA 82-280 (eff July 1, 1982).
19. 735 ILCS 5/2-1601 (prior to August 21, 2002).
21. Ill S Cr R 106.
22. See, e.g., Loffelmacher, 236 Ill App 3d 690, 603 NE2d 80 (2d D 1999).
23. McGinnis v McGinnis, 268 Ill App 3d 123, 643 NE2d 281 (4th D 1994); Wray v Brassard, 268 Ill App 3d 1007, 589 NE2d 1012 (4th D 1992). This exception was subsequently codified at 735 ILCS 5/12-108(a).
24. Unfortunately, this line of cases was extended by the first district in James T. Haddon, Ltd v Weiss, 342 Ill App 3d 144, 796 NE2d 109 (1st D 2003), which held that a citation proceeding could be used to revive a judgment for a debt. The authors both feel that Weiss was wrongly decided as the common law never held that the mere filing of a proceeding to enforce the judgment caused its revival. See Thomas v Kowaleski, 12 Ill App 2d 283, 139 NE2d 604 (1st D 1956) (Creditor’s bill does not revive a judgment); Ring v Pulner, 309 Ill App 333, 32 NE2d 956 (4th D 1941) (“garnishment does not revive a judgment”). The Kowaleski case, was inapplicable by retrospectively by Thomas v Richards, 13 Ill 2d 311, 148 NE2d 740 (1958); however, under the modern regime of judgment revival practice, Richards and Weiss should not be followed. Exeptions or credit’s bills (the common law writs equivalent to a modern day citation) do entitle a litigant to the same relief as a writ of scire facias.
25. Further, all service referenced by the Weiss opinion is by first class mail, which is inadequate service under Supreme Court Rule 106. In any event, this is no longer the law, as the new procedure is the exclusive method of reviving judgments.
28. Barkussian v Chicago Bd of Ed, 201 Ill 2d 95, 776 NE2d 195 (2002); Dec and Aque, 248 Ill App 3d 3d 341, 618 NE2d 367 (1st D 1993). However, early cases did not permit the judgment debto to challenge service in the original action. See Foreman v Illinois Hair & Feather Co, 337 Ill App 147, 83 NE2d 351 (1st D 1949).
31. 201 Ill 2d 95, 776 NE2d 195 (2002).
32. Id at 117-124, 776 NE2d at 209 (Freeman concurring).
34. Id.
also had an exception – if no original defendants still existed when the revival was filed, the judgment creditor was required to name and serve all of their successors-in-interest. This rule was a holdover from the scire facias procedure. Similarly, the effect of an intervening bankruptcy on a judgment lien was in dispute. While the law is clear that a judgment lien not avoided in bankruptcy is not discharged in bankruptcy, it is unclear to what extent the time to file a revival is tolled by a bankruptcy.

This analysis is further complicated by a quirk in the old law – because judgments could only be revived after the existing judgment lost its vigor, liens necessarily lapsed. Thus, a rule precluding revivals involving intervening bankruptcies would mean that a judgment lien could never be revived against a defendant who had declared bankruptcy, even if the defendant had failed to properly adjudicate the lien.

This question has created a split in authority. In *First National Bank in Toledo v Adkins*, the fourth district took the position that the expiration of the seven-year period for reviving a judgment did not extinguish a lien when the judgment debtor had previously obtained a discharge in bankruptcy and that a creditor could revive the judgment lien against the property in rem even after seven years.

In *Guertler v Barlow Woods, Inc.*, the first district came to a diametrically opposite position. The court held that when a creditor is prohibited by bankruptcy law from proceeding during the seven-year period, the revival proceeding must be filed within 30 days following the conclusion of the bankruptcy.

This conflicted with another fourth district case, *First National Bank of Mt. Zion v Fryman*, in which the court held that the filing of the revival was tolled for the number of days that the stay prevented the filing of the revival. The *Guertler* court based its conclusion on 11 USC section 108(c), holding that in the absence of a state statute on point, the federal statute applies. That statute requires the institution of any action whose statute of limitations ended during the bankruptcy stay period within 30 days after the stay ends.

The 2002 passage of 735 ILCS 5/2-1602 codifies a creditor's right to revive a judgment after bankruptcy as to the property that a lien attached before the filing of the bankruptcy action.

**How the current procedure works**

The revival statute is intended to remedy the previously described problems while providing a single simple method of reviving judgments.

**Where should the petition be filed?**

A petition to revive the judgment must be filed in the original case in which the judgment was entered. This is consistent with the dominant practice under prior law.

**When may a revival of judgment be filed?**

A revival of judgment may be filed six years and a day from the date of the previous revival or the date of the original judgment. The petition may be filed at the end of the sixth year after the judgment was entered or last revived. This allows a revival proceeding to take place before the judgment becomes dormant, seven years after its last revival or the entry of the original judgment.

The importance of revival before the end of the seventh year is that a memorandum of judgment may remain a lien against realty and maintain its priority if a new memorandum of the revived judgment is recorded prior to the end of the last seven-year period. This represents a change from prior laws, when all judgment liens against realty would expire at the end of the seven-year period.

**What must the petition contain?**

The petition to revive a judgment must recite the original date and amount of the judgment, court costs expended, accrued interest, and credits to the judgment, if any.

**How should the petition be served?**

Service of the notice of the petition to revive a judgment is to be made according to Supreme Court Rule 106. A petition for revival is considered an action seeking new relief against a debtor as outlined in Supreme Court Rule 105.

**What order does the court issue upon granting the revival?**

The order reviving a judgment does not result in a new judgment. Instead, it revives the judgment in its original amount. Costs, interest, and credits should be set forth by the plaintiff in further supplemental proceedings or execution.

**What changed under the law?**

First, a judgment may be revived for fewer than all parties. The law changes the common law rule that a judgment must be revived against all defendants. 735 ILCS 5/1602(f) clearly states that a judgment may be revived for fewer than all debtors and that an order for revival is a final, appealable, and enforceable order.

This eliminates controversies relating to missing or deceased debtors. It is particularly important when a judgment creditor wishes to continue a lien against real estate but is unable to serve all judgment debtors.

Second, a bankruptcy filing tolls the time to revive the judgment and a lien based upon a discharged judgment may only be enforced in rem. The judgment may be revived against the property if the debtor has failed to adjudicate the lien in the bankruptcy proceedings.

Assume, for example, that a memorandum of judgment is recorded against real estate before the debtor files a bankruptcy. The debtor then fails to adjudicate and remove the lien in the bankruptcy proceedings. Although the debt may be discharged in the bankruptcy proceedings, the effect of the lien is not. The lien against the real estate may be continued by reviving the judgment as to that piece of property. This addressed the situation where it was unclear whether the revival should be treated as in rem or in personam.

Section 2-1602(e) codifies Illinois case law. The judgment may be revived in rem against property held by a debtor...
who obtained a discharge in bankruptcy when the lien was perfected prior to the filing of the bankruptcy and the debtor has failed to adjudicate the lien in the bankruptcy proceedings and have it removed.

735 ILCS 5/2-1602(e) appears to have filled the gap cited by the Guertler court and adopted the position suggested by the Adkins court (see the discussion above). However, in the event that the bankruptcy stay blocks a revival prior to the expiration of the seven-year period, the best practice is to file as soon as the stay is lifted rather than test the law in this area.

What are the exceptions to revival of judgments? There are three exceptions to the revival-of-judgment requirement: (1) a judgment relating to child support need not be revived; (2) a judgment recovered in an action for damages for injury described in section 13-214.1 of the Code of Procedure (Crime Victims Act) need not be revived; and (3) a sheriff’s real estate levy pending at the end of the seventh year may be continued to completion within one additional year without reviving the judgment.

Conclusion

The statute for revival of judgments provides judgment creditors with a simple and straightforward process for reviving judgments and a new mechanism for enforcing them. It removes defects in the revival procedure carried over from the common law of scire facias and codifies existing case law. It also affords judgment debtors a breakdown of sums claimed and an opportunity to receive notice and be heard before entry of an order reviving judgment. ■

50. 735 ILCS 5/12-108(a).
51. Id.
52. Id.