



NEWS

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OHIO CHANGES GARNISHMENT PROCEDURES

In June, 2008, Ohio Governor Ted Strickland signed into law legislation which significantly alters the procedures for garnishment in order to collect a judgment. The following is a synopsis of the changes made to Ohio garnishment procedures as recently reported by the Ohio Legislative Service Commission.

GARNISHMENT PROCEDURES

The Garnishment Law (R.C. Chapter 2716.) permits a judgment creditor (the person who obtains a judgment against another in a civil action) to garnish the personal earnings and other property of the judgment debtor (the person against whom the judgment has been obtained) through a proceeding in garnishment. A garnishment order requires a garnishee (the person or entity in possession of certain money, property, credit, or disposable earnings belonging to a judgment debtor) to make the money, property, credit, or disposable earnings available to satisfy the judgment. The act modifies certain aspects of the garnishment procedure.

GARNISHING PERSONAL EARNINGS

Affidavit Filed to Commence Garnishment.

Prior law required a judgment creditor to file an affidavit to begin a proceeding in garnishment of personal earnings. That affidavit had, among other things, to affirm that the person filing the affidavit had good reason to believe and actually believed that the garnishee was an employer of the judgment debtor who may have had personal earnings of the judgment debtor that were not exempt from garnishment. The act instead requires that the affidavit contain the name and address of the garnishee who may be an employer of the judgment debtor and who may have the judgment debtor's personal earnings. (R.C. 2716.03(A)(2).)

Pre-Garnishment Demand.

Under prior law, after obtaining a judgment and before garnishing the personal earnings of the judgment debtor, the

judgment creditor had to serve a written demand upon the judgment debtor for the excess of the amount of the judgment over the amount of personal earnings that were exempt from garnishment. Under the act, the demand is to be for the excess of the amount of the judgment over the amount of personal earnings that may be exempt from garnishment. (R.C. 2716.02 (A) (2) .)

Service of Order of Garnishment.

A garnishee that is a judgment debtor's employer must be served with a binding order of garnishment for personal earnings issued by a common pleas, municipal, or county court. The act modifies the form that the order of garnishment must substantially comply with. Previously, the order of garnishment had to provide that the judgment creditor had filed an affidavit stating that the garnishee owed the judgment debtor money for personal earnings and that some of that money might not have been exempt from garnishment under Ohio or federal law. Under the act, the order is to provide that the judgment creditor has filed an affidavit stating that the garnishee may owe the judgment debtor money for personal earnings. (R.C. 2716.05.)

GARNISHING PROPERTY OTHER THAN PERSONAL EARNINGS

Affidavit Filed to Commence Garnishment.

A judgment creditor may begin a proceeding for garnishment of property other than personal earnings by filing a written affidavit. Under prior law, the affidavit had, among other things, to affirm that the person filing the affidavit had a reasonable basis to believe that the person named as the garnishee in the affidavit might have property other than personal earnings of the judgment debtor that was not exempt under Ohio or federal law. The act instead requires that the affidavit set forth the name and address of the garnishee who may have in the garnishee's hands or control money, property, or credits, other than personal earnings, of the judgment debtor. (R.C. 2716.11(C) .)

Service of Order of Garnishment.

Continuing law requires that, within 12 days of the filing of an affidavit to commence a proceeding for garnishment of property other than personal earnings, the court must set a hearing. Upon the scheduling of the hearing, the clerk of the court must immediately issue to the garnishee three copies of the order of garnishment, which binds the property, and of a

written notice that the garnishee must file an answer with the court. The copies of the order of garnishment and of the notice must be served on the garnishee "in the same manner as a summons is served" [6] and not later than seven days before the date on which the hearing is scheduled. The act specifies that the order binds property in excess of \$400 and that the garnishee, in answer to the order, must state whether and how much property of the judgment debtor the garnishee has in excess of \$400. The act further requires that the clerk mail a copy of the order and notice of garnishment to the garnishee by ordinary or regular mail. The act protects from liability for damages in a civil action a garnishee that garnishes property in good faith reliance on the order and notice sent by the clerk. (R.C. 2716.13(A) and (B).)

The act modifies the form that the order and notice of garnishment must substantially follow. Previously, the order and notice of garnishment had to provide that the judgment creditor had filed an affidavit stating that the garnishee had money, property, or credits, other than personal earnings, in the garnishee's hands or control that belonged to the judgment debtor, some of which might not have been exempt from garnishment under state or federal law. The act eliminates the italicized clause and requires that the order and notice state that the judgment creditor has filed an affidavit stating that the garnishee may have the judgment debtor's money, property, or credits, other than personal earnings, in the garnishee's hands or control. (R.C. 2716.13(B).)

Notice to Judgment Debtor of the Order of Garnishment.

Continuing law requires the judgment creditor to file with the court an order instructing the clerk to issue a notice to the judgment debtor of the garnishment and to provide the judgment debtor with a form with which to request a hearing. Under prior law, the notice to the judgment debtor had to state that the court had issued an order in favor of the judgment creditor directing some of the debtor's money, property, or credits in the possession of the garnishee be used to satisfy the judgment. The act instead refers to the debtor's money, property, or credits in excess of \$400 that may be in the possession of the garnishee. (R.C. 2716.13(C)(1)(a).)