

Collection of Damages

(1) Considerations Before Even Pursuing Judgment — Should I Even Bother?

- Is it worth your time and energy (missed work) or your money (if you hire a lawyer) to pursue a judgement?
 - Current address
 - Employment
 - Bank account
 - Prior judgements and the priority of any prior judgements.
- What will I get if I pursue a judgement?
 - Itemized damages .
 - Costs (cost of summons, cost of service of process, cost of publication notice, cost of sheriff, docketing fee).
 - Statutory attorney fees (less if default judgement taken).

(2) Prepare for Collecting Judgement at the Time that you Enter into Rental Agreement

(5) Taking Judgement

- Affidavit of Non Military Service
- If no personal service than must publish - \$60 - Daily Reporter.

(6) Docketing Judgement

- \$5 with Clerk of Courts.
- Lien on any real estate owned by the debtor in the county for 10 years.
- Docketing a foreign judgement (obtain transcript of the judgement and docket it in any other county that debtor owns property).
- Often times debtor pays off years later when wants to obtain a loan to buy a house or even to get married.
- Minimal effort and cost and if you took judgement you should at a minimum docket the judgement.

(7) Financial Disclosure Forms

- Purpose: To learn if they have any money/property/items of value.
- Court usually sends out.
- Debtor must return these completed forms to Creditor (YOU) within 15 days.
- If not returned can pursue contempt motion on the 16th day.
- Debtor ordered in to complete financial forms.
- If Debtor does not appear – body attachment.
- Will be picked up next driving violation and held in jail until you or attorney comes to court to have them fill out financial forms.

(8) Supplemental Examination

- Purpose: To learn if they have any money/property/things of value.

- Held before a court commissioner.
- Debtor testifies under oath.
- Must personally serve debtor – so don't pursue if you don't know where debtor lives or works.
- If debtor has no assets there is not much you can do.

(9) Garnishment of Bank Account (Non-Earnings)

- Need to know debtor's checking account number (prior rent checks) or else obtain that information from debtor during supplemental examination or from his/her answers to financial forms.

Small Claims:

Milwaukee Co. - \$84.50

Waukesha Co. - \$82.00

Large Claims:

Milwaukee Co. - \$202.50

Waukesha Co. - \$198.00

- Need to serve non-earnings garnishment summons on debtor and garnishee (bank) with fee of \$3 — serve bank first or else debtor withdraws any money — but debtor must be served within 10 days of service on garnishee otherwise garnishment action will be dismissed.
- Garnishee must answer within 20 days of service.
- If creditor (YOU) disagrees with answer of garnishee YOU must serve a reply within 20 days of receipt of answer or else garnishee's answer is deemed true. If you object to it the "issue will be joined" and court hearing will be set.
- Exemptions:
 - The first \$1000 on deposit in any one or more accounts is exempt from garnishment.
 - Any money in the account derived from government benefits is also exempt.
- If debtor has any money subject to garnishment at time that garnishee receives summons garnishee must turn it over to you or risk being held liable for the amount themselves. Any money deposited by debtor after garnishee receives garnishment summons will not be attached.
- Failure of garnishee to answer or turn over any money that can legally be attached may result in the garnishee being liable for the entire judgement debt.
- Debtor may file an answer objecting to the garnishment but is not required to do so.

(10) Garnishment of Wages (Earnings Garnishment)

- Need to know debtor's employment or else obtain that information from debtor during supplemental examination or from his/her answers to financial forms.

Small Claims:

Milwaukee Co. - \$84.50

Waukesha Co. - \$82.00

Large Claims:

Milwaukee Co. - \$202.50

Waukesha Co. - \$198.00

- Must use the specific forms available.
- Need to serve earnings garnishment summons on debtor and garnishee (employer) with fee of \$15 (plus \$3 per payment after first payment - fee to employer).
- Must serve the following documents along with the earnings garnishment form and summons:
 - (a) Exemption notice
 - (b) Debtor's Answer
 - (c) Garnishment exemption worksheet
 - (d) Poverty guidelines for earnings
- Garnishee must answer within 20 days of service.

- If creditor (YOU) disagrees with answer of garnishee YOU must serve a reply within 20 days of receipt of answer or else garnishee's answer is deemed true. If you object to it the "issue will be joined" and court hearing will be set.
- Exemptions:
 - 20% rule
 - If debtor's household income is below poverty guideline or if the garnishment would result in same.
 - If debtor receives need-based public assistance or has received such assistance within past 6 months or if debtor has been determined to be eligible for such assistance but have not received it.
 - Need-based public assistance includes:
 - medical assistance;
 - supplemental security income (SSI);
 - food stamps;
 - veteran's benefits based on need.
 - If at least 25% of debtor's disposable earnings are assigned by court order for child support/family support.
- Length of garnishment is 13 weeks if debtor is not an employee of State or local government. If debtor is a state employee or employee of local government then garnishment lasts until judgement is satisfied.
- Payments made by garnishee to creditor between 5 and 10 business days after each payday.
- Garnishee determines if it will owe earnings to the debtor for pay periods that begin within 13 weeks after service of summons — if not then garnishee sends statement of this to creditor within 7 business days of service.
- Limitations:
 - Other garnishments:
 - Only one garnishment can affect any pay period (so if a different garnishment is in effect you must wait until their 13 weeks are passed). This is true even though there may be nonexempt earnings remaining after the first judgment is satisfied. Garnishee must notify creditor of pending garnishments within 7 business days from service. Priority of garnishments is determined by order of service on garnishee.
- Debtor's Answer:
 - Debtor's answer should be mailed to garnishee not the court and can be filed at any time during the 13 week period. If garnishee receives said answer then garnishee must forward it to creditor within 3 days. Unless served with a court order saying otherwise a garnishee must accept as true all exemptions claimed by debtor and thus stop the garnishment.

(11) Bankruptcy and its affect on collection

- Stops Everything!!
- Must dismiss eviction action if it is already filed and/or must cease pursuing collection of damages judgement.
- If have not yet started an eviction action you cannot file one now and you cannot serve a Notice Terminating Tenancy (until you follow the steps below).
- If you are in process of collecting on judgement you must stop.
- If you have not yet filed eviction action or eviction action was pending

- Must petition Bankruptcy Court for Relief from Automatic Stay via motion.
 - If debtor objects then it will be set for hearing – typically enter into Stipulation with a “drop dead” provision with tenant
 - If debtor does not object then you can file an Affidavit of No Objection and a proposed Order lifting the Automatic Stay for the judge’s signature.
 - Only after you obtain relief from automatic stay from Bankruptcy Court can you serve a new Notice Terminating Tenancy on tenant for all past due rent incurred post bankruptcy filing (assuming they have failed to pay it after they filed bankruptcy) and then follow through with an eviction if applicable.
 - So tenant basically gets to start fresh from the date that s/he filed for bankruptcy.
- If you have already obtained judgment of eviction and a damages judgment against ex-tenant:
- Cannot pursue the collection of said judgement if it is listed as a debt in his/her bankruptcy.
 - If ex-tenant files Chapter 7 — say goodbye to your money.
 - If tenant file Chapter 13 - it is possible that you may receive a small percentage of your money over the period of the debtor/ex-tenant’s bankruptcy plan.

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