

METHODS OF COLLECTING JUDGMENTS

JD PEACOCK II

CLERK OF CIRCUIT COURT

OKALOOSA COUNTY

Small Claims Judgments may be enforced/collected in certain ways. This booklet is designed to tell you a little about the procedures but is not intended as a substitute for legal advice from a competent lawyer who is an active member of the Florida Bar.

PLEASE UNDERSTAND THAT JUDGES, JUDICIAL ASSISTANTS (secretaries), CLERKS OF COURT, and SHERIFF'S OFFICE EMPLOYEES cannot practice law or give you legal advice. They can only point out the existence of certain procedures, but cannot tell you how to follow them or how effective they will be.

ONLY A LAWYER CAN GIVE LEGAL ADVICE. You should talk with an attorney if you have any questions about your rights.

● RECORDING THE JUDGEMENT (Real Property Lien)

You may obtain a certified copy of the Judgment from the Clerk of Court and then Record the Judgment in any county or counties where the debtor owns real estate. Once recorded, the Judgment becomes a lien on the debtor's real estate in that county for 10 (ten) years from the date of recording with the statutory service charge. Moreover, the lien may be extended for additional periods of 10 (ten) years by re-recording a certified copy of the Judgment within the 90 (ninety) day period preceding the expiration of the lien. In no event shall the lien upon real estate be extended beyond 20 (twenty) years from original date of entry. Once the Judgment is paid off (satisfied) by the Defendant, the Plaintiff is required by law to supply the Defendant a notarized Satisfaction of Judgment so it may be recorded to lift the lien from his or her credit record. Failure to supply the Defendant with a Satisfaction of Judgment can result in criminal charges against the Plaintiff.

● OBTAINING A JUDGMENT LIEN (Personal Property)

Effective October 1, 2001, you may obtain a Judgment Lien against personal property by filing a Judgment Lien Certificate with the Department of State, Division of Corporations. The Department of State will maintain a database of judgment lien files accessible to the public via the internet. To file a Judgment Lien, you must file a Judgment Lien Certificate with the Secretary of State. You may obtain a Judgment Lien Certificate form by contacting the Secretary of State, Division of Corporations at (850) 245-6039 or through the internet at www.sunbiz.org. The required fees for filing are listed on the forms.

The Judgment Lien Statutes are F.S. 55.201—55.209. The Judgment Liens filed with the Secretary of State are valid for 5 (five) years from the original date of filing. For further information concerning content, filing, extending, and satisfaction of liens, please refer to the

afore referenced Florida Statutes or contact the Department of State, Division of Corporations, Judgment Liens. P.O. Box 6250, Tallahassee, FL 32314 or (850) 245-6039.

● LOCATING THE PROPERTY

There are many ways to find out what property is owned by a debtor. The County Tax Collector or "tag office" can tell you if the debtor owns a vehicle which is registered in the county. You may also write to the Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, 107 Gaines St., Tallahassee, FL 32304, to see what vehicles a debtor owns elsewhere in the State. The Official Records of the county, located in the Clerk's Office, will show what real property a debtor owns in that county. These records can be complicated and you may want an experienced person to check these with you.

Another way to locate property of a debtor is through a hearing In Aid of Execution. If you were not represented by an attorney prior to judgment, you may request the Judge to enter an order to appear In Aid of Execution. The hearing will not be set until 30 (thirty) days or more from the date of entry of the judgment. The purpose of the hearing is to inquire of the judgment debtor, under oath, as to their earnings, financial status, and any assets available in excess of exemptions to be applied towards the satisfaction of the judgment. You will be required to pay a fee for the service of this order.

If your judgment is a result of damages due to an automobile accident, you may contact the Clerk's Office 30 (thirty) days after the file date of the final judgment to have a Record of Unsatisfied Judgment filed with the Bureau of Financial Responsibility in Tallahassee. This will result in the suspension of driving privileges of the defendant. You will be required to furnish a copy of the accident report. A fee associated with this process will be charged by the Clerk of Court.

● OBTAINING A WRIT OF EXECUTION

The judgment creditor may obtain a Writ of Execution any time during the life of the Judgment Lien (filed with the Department of State) except during the 10 (ten) days immediately following the day the Judgment was issued. During this 10 (ten) day period, a judgment debtor may file a motion for a new trial, and that motion must be disposed of before a Writ of Execution may be issued by the Clerk. A judgment lien certificate must be filed with the Secretary of State in order to levy on property. Writs of Execution are no longer docketed with the Sheriff's Office until specified property (to levy upon) has been located. A Writ of Execution allows the Sheriff to take, advertise, and sell to the highest bidder, enough personal property (see levying of the writ of execution) to satisfy the judgment and the costs of seizure, advertising, and sale.

● LEVYING ON THE WRIT OF EXECUTION

Once you find the debtor has property, and you obtain your Writ of Execution, you should take the Writ to the Sheriff's Office with certain instructions for the levy (taking). These instructions should include a description of the kind and type of property which belongs to the debtor. The Sheriff will require that you pay, in advance, the costs to take, store, advertise and sell the property. Once seized, the Sheriff will advertise the property for sale to the highest bidder. If / when the property is sold, the proceeds will be dispersed pursuant to Florida Law.

If you have any additional questions as to the above, you should contact the Civil Process Division of the local Sheriff's Office.

● WRIT OF GARNISHMENT

Garnishment involves having the debtor's employer make periodic payments to the creditor from a portion of the debtor's salary as it becomes due, until the judgment is satisfied or otherwise provided by court order. Any person who has sued to recover a debt and has recovered a Judgment in any court against any person or business has a right to a Writ of Garnishment. The writ grants the collecting party legal rights to certain assets owned by the defendant and held by a third party. This is a very technical and complicated procedure, and as such, you may wish to consult with an attorney. The Clerk's Office does not have any forms available for this procedure.

● EXEMPTIONS

The Florida Constitution provides that certain property of a debtor may be exempted from forced sales to pay a valid judgment. These exemptions include the real estate which is the residence of a debtor who is the head of a household or family, as well as \$1,000 of personal property. The term "head of household" includes any married, unmarried, divorced, legally separated or widowed person who is providing more than 1/2 (one-half) of the support for a child or other dependent. In addition, a debtor who is the head of household may be entitled to claim an exemption on wages, provided the money due is for the personal labor or services of such person. A general federal exemption limits the amount of wages that may be garnished to not more than 25 (twenty five) percent of total disposable earnings. The debtor must meet certain legal criteria specified in the respective statutes and case law to qualify for an exemption.

● SOURCES OF INFORMATION

More information about collecting your Judgment may be available in the Okaloosa County Law Libraries or your local public library.

You may also wish to consult an attorney about the methods and costs of enforcing a judgment.

SUMMARY CLAIMS DIVISION OF COUNTY COURT

**Courthouse Crestview 101 E James Lee Blvd Crestview, FL
(850) 689-5000 Ext. 3316**

**Courthouse Annex 1940 Lewis Turner Blvd Ft. Walton Beach, FL
(850) 651-7200 Ext. 4354**

www.clerkofcourts.cc