

COLLECTING A JUDGMENT



Furnished by
the Judges of the County Court
of Lake County, Florida

DISCLAIMER

This booklet is intended as a brief guide to collecting judgments in Lake County. It is not legal authority, and should not be considered as such. Judgment collection is an area of the law fraught with pitfalls and traps for the unwary or unsavvy. Therefore, the authors express no opinion as to the validity of the contents of this pamphlet, and disclaim any liability based upon the contents. Any person seeking legal advice as to judgment collection is strongly urged to engage the services of an attorney.

COLLECTION

Winning the courtroom battle is only the initial step in receiving satisfaction on a claim. Any individual who pursues a claim through small claims proceedings would like to recover the amount due. Absent a recovery of the amount which the court determines is owing, the time and effort expended will be nothing more than wasted energy and money. In most instances, however, the loser, also called the debtor, does not congratulate the winner, also known as the creditor, and ask where the check should be sent. Indeed, quite the opposite is true. Often, the loser smirks at the winner and declares that any effort which the winner might make in trying to collect on the judgment will be futile. Therefore, the winner must be prepared to search for a way to collect.

RENDITION OF THE FINAL JUDGMENT

At the close of the case, the court will render a decision in written form. This document should settle all issues between the parties, and set forth the respective liabilities of the parties. If the document does all those things, it is a final judgment. However, this written decision is subject to some modification for a period of ten (10) days. It is during this period that either party can ask for a rehearing of the case. Because of this uncertainty, the court will not normally issue a writ of execution until the expiration of the ten-day period. The court may, however, issue a writ of execution instantly if the prevailing party believes the loser will try to hide or dispose of assets during the ten (10) day period.

RECORDING THE FINAL JUDGMENT

After the rendition of the final judgment, the Clerk of the Court will record a copy of the judgment in the official record book of the county in which the judgment was rendered. This recordation, however, accomplishes nothing toward the collection of the judgment. In order to progress toward recovery, the winner must request a certified copy of the final judgment from the Clerk of the Court, and record the certified copy in the official record book of the Court, and record the certified copy in the official record book of the county in which the loser has real property. If the loser has real property in more than one county, the winner should request multiple certified copies and record them in the official record books of all the counties in which the loser has real property. In other words, any other liens recorded prior to that of the winner must be extinguished prior to the winner receiving any money from the sale of the property. Therefore, the **WINNER SHOULD GET A CERTIFIED COPY OF THE FINAL JUDGMENT IMMEDIATELY UPON ITS RENDITION BY THE COURT AND RECORD IT WITHOUT DELAY.**

The judgment, order, or decree shall be a lien in that county for an initial period of 10 years from the date of the recording. The lien may be extended for an additional period of 10 years by re-recording a certified copy of the judgment, order, or decree prior to the expiration of the lien or the expiration of the extended lien and by simultaneously recording an affidavit with the current address of the person who has a lien as a result of the judgment, order, or decree is re-recorded. The lien or extended lien will not be extended unless the affidavit with the current address is simultaneously recorded. Any judgment is extinguished after twenty (20) years.

JUDGMENT LIEN

For information on How to Collect a Judgment in Florida Under the New Judgment Lien Law please refer to the select link for County Civil or Small Claims in the Forms and Documents page. The information provided by the Florida Department of State will explain the process of writs, levy and sale of personal.

GARNISHMENT

Property which is not subject to levy is often subject to garnishment. However, there are some exemptions. Some examples of property which may be garnished are bank accounts, payments being made to the debtor and wages.

In order to garnish the loser's property, the winner must request that the court issue a writ of garnishment. The motion must state that the loser does not have enough property against which a levy may be made in order to satisfy the judgment. The court, if the motion is sufficient, will then issue a writ of garnishment. This writ is directed at the person or entity who owes the loser money, not the loser. The person or entity to which the writ is issued is called the garnishee.

The garnishee must respond to the writ within twenty (20) days. In the response, the garnishee must list all of the loser's property over which the garnishee has control, and all of the persons who have an interest in that property. Within five days of the garnishee's response, the winner must notify all of the persons listed in the garnishee's response of the attempt at garnishment. Please note that this answer can be expensive to the winner, as the garnishee's costs and attorney's fees may be charged to the winner.

Following notice, all interested parties have the right to respond to the motion and the answer. If either of these is contested, a trial will be held to resolve the differences. Following the trial, or if no matters are in dispute, the court will enter a judgment of garnishment. This judgment will either allow or disallow the garnishment. If it allows the garnishment, the garnishee will normally pay without further ado. If, however, the garnishee fails to pay, collection may be sought against the garnishee.

As a final note to garnishment, please be advised that in attempting to collect periodic payments from a garnishee, the winner must seek a writ of garnishment for each periodic payment as it comes due, unless the periodic payment is a wage. Wages, if not exempt, can be subject to a continuing writ of garnishment.

EXEMPTIONS

The winner may not however take:

- a) the loser's homestead,
- b) personal property of up to \$1000 which the loser claims as exempt,
- c) any property in which the loser has an interest as a tenant by the entirety, if the loser's spouse was not a party to the lawsuit, nor
- d) the earnings of a head-of-household.

Additionally, a winner may not garnish:

- a) life insurance proceeds payable to a beneficiary,
- b) the cash surrender value of a life insurance policy,
- c) wages or unemployment compensation of a deceased individual which are paid to surviving family members,
- d) disability benefits, nor
- e) retirement benefits payable from a qualified pension plan, as that term is defined in the Internal Revenue Code.