

JAMES R. O'DONNELL  
ATTORNEY AT LAW  
DAWN A HARRISON  
ATTORNEY AT LAW  
9 North High St., P.O. Box 98  
Covington OH 45318-0098

Phone  
937-473-3161

February 20, 2008

Fax 937-473-3168

### DISCLAIMER

THIS IS A GENERAL STATEMENT CONCERNING DEBTOR'S EXAM PROCEDURE AND GARNISHMENT AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL ADVICE TO ANY PARTICULAR LANDLORD OR SITUATION. EACH CASE HAS TO BE DETERMINED ON ITS OWN MERITS AND EACH LANDLORD SHOULD FOLLOW HIS/HER OWN ATTORNEY'S ADVICE

To all landlord clients:

I have had some of you ask me about a debtor's exam procedure whereby there is a judgment against the defendant and the place of employment is not known or even if the person is employed.

1. THIS PROCEDURE DOES NOT GUARANTEE THAT THERE WILL BE ANY MONEY COLLECTED SINCE IT MAINLY DEPENDS ON WHETHER THE DEFENDANT IS GAINFULLY EMPLOYED.

2. ALSO YOU MAY CONSIDER THE COURT COST INVOLVED TO BE EXPENSIVE BUT I ASSUME THAT YOU DO TAKE YOUR EXPENSES OFF OF YOUR SCHEDULE C INCOME TAX RETURN-SO IT IS NOT ALL LOST-BUT THAT IS THE DECISION OF YOU AND YOUR TAX ACCOUNTANT.

THE PROCEDURE IS AS FOLLOWS;

1. JUDGMENT FOR MONEY GRANTED BY THE COURT;
2. FILE A MOTION WITH THE COURT FOR A DEBTOR'S EXAM-COST \$11.00 PER DEFENDANT-INCLUDES SERVICE BY CERTIFIED MAIL; DEFENDANT(S) HAVE TO BE SERVED BY CERTIFIED MAIL OR PERSONAL SERVICE-REGULAR MAIL SERVICE NOT ALLOWED.
3. HOWEVER NORMALLY THE DEFENDANT DOES NOT ACCEPT CERTIFIED MAIL-SO PERSONAL SERVICE HAS TO BE MADE; COST BY BAILIFF IS \$11.00 PER PERSON (PROBLEM WITH BAILIFF SERVICE IS THE BAILIFF ONLY WORKS DAYS AND IF DEFENDANT WORKS HE WILL NOT BE HOME-SO THAT LEAVES SERVICE BY SHERRIFF AND COST IS \$50.00.
4. COURT SETS THE DATE FOR DEBTORS EXAM AND IF THE PERSON IS PROPERLY SERVED AND APPEARS THEN QUESTIONS CAN BE ASKED AS TO THE DEFENDANT'S ASSETS AND PLACE OF EMPLOYMENT; IF DEFENDANT HAS BEEN PROPERLY SERVED AND DOES NOT APPEAR THEN A CONTEMPT ORDER IS ISSUED AND COURT SETS DATE FOR CONTEMPT HEARING AND AGAIN THERE NEEDS TO BE SERVICE, PERSONALLY SO EITHER \$11.00 PER PERSON BY BAILIFF OR \$50.00 BY SHERRIFF.
5. IF THE PERSONS ARE PROPERLY SERVED AND DO NOT APPEAR FOR THE CONTEMPT HEARING, THE COURT ISSUES A BENCH WARRANT TO ARREST THE DEFENDANT; COST IS \$61.00 PER PERSON. ALSO NEED TO KNOW EITHER SOCIAL SECURITY NUMBER OR DATE OF BIRTH OF THE PERSON (USUALLY THERE ARE

SUFFICIENT CASES ON FILE IN THE MIAMI COUNTY MUNICIPAL COURT THAT AT LEAST THE BIRTH DATE CAN BE OBTAINED WITH A LITTLE RESEARCH)

SO FOR ONE PERSON FROM BEGINNING TO END (WARRANT FOR ARREST IS NECESSARY) THE COST COULD BE \$172.00 IF SERVICE IS MADE BY THE SHERIFF AND OF COURSE LESS THAN THAT IF SERVICE IS MADE BY THE BAILIFF. THESE COSTS ARE ADDED TO THE COURT COST OF THE CASE AND IF THE DEFENDANT IS EMPLOYED AND GARNISHMENT IS DONE THE COST ARE RECOVERED BY YOU THROUGH THE GARNISHMENT.

IF YOU START A DEBTORS EXAM PROCEDURE YOU NEED TO BE WILLING TO CARRY IT THROUGH TO THE END. SO WITH EACH DEBTORS EXAM YOU NEED TO KNOW THAT IT MAY COST YOU AS LITTLE AS \$11.00 PER PERSON OR \$172.00 PER PERSON.

THE ABOVE COST DOES NOT INCLUDE ANY ATTORNEY FEES, WHICH WOULD BE UP TO YOUR ATTORNEY AND YOU. NORMALLY ATTORNEY FEES ARE NOT RECOVERABLE AS PART OF THE COURT ACTION EVEN IF THERE IS AN AGREEMENT THAT TENANT WOULD PAY ATTORNEY FEES

IN ADDITION, IF EMPLOYMENT INFORMATION IS OBTAINED, THERE MAY BE OBSTACLES TO THE GARNISHMENT;

A. SELF EMPLOYED PERSONS ARE DIFFICULT TO GARNISH;

B. PERSON MAY BE UNDER GARNISHMENT ALREADY-WHICH DELAYS ANY SUBSEQUENT GARNISHMENTS; EACH GARNISHMENT RUNS FOR 6 MONTHS [IF OTHERS PENDING-IF NONE PENDING GARNISHMENT GOES UNTIL SATISFIED OR PERSON BECOMES UNEMPLOYED] OR (IF NOT PAID OFF IN A SHORTER TIME) THEN THE NEXT GARNISHMENT TAKES OVER FOR 6 MONTHS; AND SO FORTH IF THE PERSONS REMAINS EMPLOYED.

C. IF PERSON IS UNDER GARNISHMENT FOR CHILD SUPPORT, THIS GOES ON UNTIL CHILD REACHES 18, AND IT MAY NOT LEAVE ANY ADDITIONAL FUNDS THAT ARE AVAILABLE FOR GARNISHMENT.

D. MIAMI COUNTY MUNICIPAL COURT WEB SITE CAN BE CHECKED TO SEE IF PERSON IS BEING GARNISHED ON A MIAMI COUNTY MUNICIPAL COURT CASE BUT THIS WOULD NOT SHOW IF THE GARNISHMENT AGAINST THE PERSON WAS FROM ANOTHER COURT FROM ANY JURISDICTION.

ONE WAY TO HELP YOURSELF AS LANDLORD, IS ON YOUR APPLICATION FOR RENTAL ASK FOR PRESENT EMPLOYER AND ASK FOR WRITTEN PERMISSION FROM TENANT TO CHECK WITH EMPLOYER-OF COURSE THIS DOES NOT HELP WHEN THE PERSON CHANGES EMPLOYMENT AND DOES NOT INFORM YOU.

SINCERELY

James R. O'Donnell  
Dawn Ann Harrison  
Attorneys at Law

A handwritten signature in black ink, appearing to read 'James R. O'Donnell', written over a faint, illegible stamp or background.

JRO