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Collection Procedures in Georgia

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Collection Procedures in Georgia

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Introduction

Collection procedures are means for creditors to obtain payment from debtors. Winning a lawsuit for one's client is not always the end of a lawyer's work. Many lawyers will likely encounter a situation where they have a judgment, but the judgment debtor is unwilling to pay. It is precisely this situation which collection procedures were created to deal with. There are principally three collection devices that are used in Georgia which include attachment, garnishment and execution and levy. The goal of this bibliography is to provide a basic understanding and a starting point for researching and utilizing these different collection procedures in Georgia.

Attachment is the seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment. In Georgia, the main form of attachment used is the provision attachment. A provisional attachment is a prejudgment attachment in which the debtor's property is seized so that if the creditor ultimately prevails, the creditor will be assured of recovering on the judgment through the sale of the seized property.

Garnishment is a judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party.

Execution and levy is a post-judgment device where the court issues a writ of execution (commonly referred to as a fieri facias or fi fa) which authorizes the sheriff to seize and sale property of the debtor to satisfy the amount owed on account of the judgment. Recording of the fi fa in the general execution docket in the county where the defendant owns property creates a lien on all real property in the county.

In order to properly utilize these collection procedures it is necessary to understand the proper process, limitations and other qualifications on using the collection device. Usually pertinent questions will arise that need to be addressed such as: when may a collection procedure be brought, what grounds are sufficient to invoke the collection procedure, what property is subject to the collection procedure? Each of these procedures is governed by statutes and thus many times reading the relevant statutes will answer most questions. Secondary materials provide an easier to understand and sometimes more thorough explanation on how to use the different collections procedures.

About the Author

Andy Adams - Fall 2007 - Remedies; Georgia Law

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Primary Sources

Cases

The following cases are major Supreme Court decisions that have ruled on the constitutionality of garnishment and attachment. They provide a basic understanding of the due process issues that are involved in collections procedures.

Shaffer v. Heitner, 433 U.S. 186 (1977). Established that quasi-in rem proceedings would meet due process requirements only when personal jurisdiction over the person could be established. Therefore, attachment cannot be used to gain jurisdiction over a person's property when they would not be subject to in personam jurisdiction.

Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969). Supreme Court decision that struck down a Wisconsin pre-judgment wage garnishment statute as a violation of due process for lack of notice and hearing.

North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975). Supreme Court decision that struck down Georgia's old garnishment statute as a violating the due process clause of the fourteenth amendment. Important in understanding the need for notice and hearing in order to meet due process considerations.

Statutes

Both attachment and garnishment are statutory creations and are covered in Title 18 Chapter 3 and 4 of the Official Code of Georgia Annotated. Specifically, attachment is covered in O.C.G.A. §§ 18-3-1 to 18-3-75, and garnishment is covered in O.C.G.A. §§ 18-4-1 to 18-4-135. Execution and levy derived from the common law; however, much of the law has been codified in Title 9 Chapter 13 of the Official Code of Georgia Annotated (OCGA §§ 9-13-1 to 9-13-178). Below are some of the important statutes that deal with attachment, garnishment and execution and levy:

a. Attachment Statutes

O.C.G.A. § 18-3-1: Attachments may issue when the debtor resides out of state, moves or is about to move his domicile outside the limits of the county, absconds, conceals himself, resists legal arrest or is causing his property to be removed beyond the limits of the state.

O.C.G.A. § 18-3-2: Attachment may be sought in all cases of money demands as long as the O.C.G.A. § 18-3-1 grounds are met.

O.C.G.A. § 18-3-3: An attachment may be had before suit at common law has been initiated or during a pending suit.

O.C.G.A. § 18-3-10: Requires a bond twice the amount claimed.

O.C.G.A. § 18-3-9: Procedure for obtaining attachment.

O.C.G.A. § 18-3-14: Notice requirement.

O.C.G.A. § 18-3-15: Right of defendant to post-seizure hearing.

O.C.G.A. § 18-3-19: Forms for attachment.

b. Garnishment Statutes

O.C.G.A. § 18-4-40: Grounds for Pre-judgment garnishment. Similar to attachment.

O.C.G.A. § 18-4-43: Pre-judgment garnishment requires a bond twice the amount claimed.

O.C.G.A. § 18-4-46: Personal earnings of defendant are not subject to pre-judgment garnishment.

O.C.G.A. § 18-4-60: Post-judgment garnishment may be had in all cases where a money judgment shall have been obtained in a court of Georgia or in a federal court sitting in the state.

O.C.G.A. § 18-4-20: Limitation on garnishing earnings; lesser of 25% of disposable income or 30 times federal minimum wage.

O.C.G.A. § 18-4-22: Exemption for pension or retirement funds or benefits.

O.C.G.A. § 18-4-66: Forms for post-judgment garnishment.

c. Execution and Levy Statutes

O.C.G.A. § 9-13-1: Entry and signing of judgment is a prerequisite to execution.

O.C.G.A. § 9-13-2: Execution suspended by appeal.

O.C.G.A. § 9-13-13: Written notice required when levy on land.

O.C.G.A. § 9-13-34: Plaintiff may in good faith and for a valuable consideration transfer any execution to a third person. In all cases the transferee of any execution shall have the same rights as the original plaintiff.

O.C.G.A. § 9-13-50: Defendant shall be at liberty to point out what part of his property he may think proper to be levied on.

O.C.G.A. § 9-13-120: Affidavit of illegality may be filed as a defense to any execution the defendant feels is proceeding illegally.

O.C.G.A. § 9-13-140 & O.C.G.A. § 9-13-141: Notice of judicial sale published in a newspaper for 30 days or for four weeks or once a week for four weeks.

O.C.G.A. § 9-13-140: Sale is to take place at the courthouse of the county where the levy was made on the first Tuesday in each month, between the hours of 10:00 A.M. and 4:00 P.M. If this falls on New Year's Day or Independence Day, then it is the first Wednesday.

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Secondary Sources

Secondary Sources

Lewis N. Jones, *Georgia Legal Collections* (Thomson-West 2000). Good practitioners guide to collections in Georgia that covers all the basics and has useful forms.

Mark D. Link & Eric James Hertz, *Georgia Law of Damages with Forms* (Thomson-West 2007). Comprehensive treatment of Georgia damages with a section on execution and garnishment.

6 Am. Jur. 2d Attachment and Garnishment §§ 1 et seq. General coverage of all the basic concepts and issues surrounding attachment and pre-judgment garnishment procedures; although not specific to Georgia, useful to obtaining a base understanding collections.

30 Am. Jur. 2d Executions and Enforcement of Judgments §§ 1 et seq. General coverage of all the basic concepts and issues surrounding execution and post-judgment garnishment procedures; although not specific to Georgia, useful to obtaining a base understanding collections.

47 Am. Jur. 2d Judicial Sales §§ 1 et seq. General coverage of the judicial sales process.

12 Ga. L. Rev. 814 (1978) §§ 938 to 1018. Good in depth treatment of issues surrounding collection procedures and constitutional issues. Gives a historical perspective and although dated is still relevant in most aspects as the law of collections has not changed drastically.

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Electronic Research

Electronic Research

Almost all research can now be done online if one has access to the right database. Below are links to sites and databases where one can find the resources mentioned in this bibliography as well as expand the scope of research as it might relate to collection procedures.

a. [Westlaw](#)

Westlaw is a comprehensive legal database with great searching features that includes access to federal and state statutes, cases, and administrative material. In addition, Westlaw includes a vast array of secondary sources such as legal encyclopedias, legal dictionaries, practitioners' handbooks, American Law Reports, and more. Of particular note, Westlaw has full access to most of the books they print including the above cited Georgia Law of Damages and Georgia Legal Collections. Search in the database named "GALGALCOL" for Georgia Legal Collections and "GADAMAGES" for Georgia Law of Damages. Also, Westlaw provides a citation service called "Keycite" that is essential for making sure the statute or case you may be relying on is still good law.

b. [LexisNexis](#)

LexisNexis provides the same quality database as Westlaw. LexisNexis also provides access to state and federal statutes, cases, and administration material. LexisNexis provides an extensive collection of secondary sources; however, it does not include access to West titles. LexisNexis Shepherd's citation service sets the bar for making sure that a case or statute is good law.

c. [LoisLaw](#)

LoisLaw is a low cost alternative to LexisNexis and Westlaw. Provides access to most primary sources; however, the secondary sources are quite limited. In addition, search features and the citation service leave much to be desired.

d. [Casemaker](#)

A free resource to those who are members of Georgia's Bar. Includes access to most primary sources. No secondary sources are available. Searching features are extremely limited and the citation service only provides a list of where one's case has been cited. There is no indication of treatment given in the cited case.

e. [Official Code of Georgia](#)

LexisNexis in coordination with the State of Georgia provides free public access to the Georgia Code; however, there are no annotations provided.

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