

Pennsylvania Residential Owners Association

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Wage Attachment Enacted For Pennsylvania Landlords

Pennsylvania landlords who have judgments against residential tenants for unpaid rent and other lease charges can now collect these judgments by attaching up to 10% of the tenant's wages. An amendment to Title 42, Section 8127 of the Pennsylvania Consolidated Statutes authorizing this was passed by the Pennsylvania legislature in the final days of its 2002 lame duck session, and was signed into law by the Governor as Act 215 of 2002 on December 9th.

Obtaining access to wage attachment has been one of PROA's primary goals since the organization was founded 15 years ago. A number of years ago, we were successful in obtaining wage attachment for physical damages to rental units caused by tenant abuse. Now, with the enactment of Act 215, this has been extended to include unpaid rent and other lease charges. The new provision also applies to pre-existing unsatisfied judgments obtained before the act became effective.

Successful enactment of the new wage attachment provision was the result of intensive efforts by Pugliese Associates, lobbying on behalf of PROA. Much credit goes to Kim Sokoloski of Pugliese Associates, who worked tirelessly in the effort. John Baldwin (PROA Board Member from Erie) worked on drafting the legislation. PROA also appreciates the efforts of our members who responded quickly when we requested letters and phone calls to legislators, often with very little notice.

How It Happened

During the lame duck session, PROA was involved in a two part strategy to get wage attachment passed. For several months we had been working with a group known as the Wage Garnishment Coalition whose membership consisted of credit card companies, collection agencies, banks, retailers, landlords, and other creditors who wanted to extend wage garnishment to all creditors. With input from PROA, the group drafted an amendment to Title 42 which would accomplish this goal.

During PROA's discussions with legislators, several of them expressed concern about allowing wage garnishment for all creditors, but were less concerned about its use by landlords. Because of this, PROA's second strategy was to draft an alternate amendment to Title 42, which would allow wage attachment by landlords only. We wanted to have this amendment ready in case the Wage Garnishment Coalition's amendment failed to pass.

During the lame duck session, there was a rush to get a number of important pieces of legislation passed before the legislature closed. These bills had taken months of legislative effort. If they weren't passed by the end of the session, they would die; and the effort would have to start all over again next session. Pugliese Associates identified two of these bills which would be appropriate vehicles for the two amendments which had been prepared.

Senate Bill 253

SB 253 contained a change to Title 42 providing for International Commercial Arbitration of Claims. It was passed unanimously by the Senate in March 2002. The Wage Garnishment Coalition's amendment was added to the bill in the House Appropriations Committee on November 25, 2002. However, the wage attachment language was stripped from the bill on November 27th by amendment on the floor of the House, before a final vote on the bill took place.

Senate Bill 1452

SB 1452 contained a number of changes to Title 42 which were proposed by the Pennsylvania Courts. The most crucial of these was adding a number of badly needed judges to the court of common pleas to reduce its backlog of cases. The bill passed the Senate unanimously in October 2002.

At PROA's request, Representative Kerry Benninghoff (R-Centre, Mifflin) filed an amendment to the bill in the House, adding PROA's wage attachment amendment for landlords only. The amendment was agreed to by a vote of 109 to 87 on November 26th. This was a crucial victory for PROA. The bill, with our amendment included, passed the House by a vote of 177 to 18 later that same day.

SB 1452 was then referred back to the Senate for a concurrence vote on the House amendments. The Senate concurred with the House amendments by a vote of 36 to 11 on November 27th.

Having passed both houses with exactly the same language, the bill was sent to the Governor for his signature. Governor Schweiker signed the bill into law as Act 215 of 2002 on December 9th. The new law went into effect immediately.

Limitations

The text of Title 42, Section 8127 is attached. It has been marked up to show the changes made by Act 215.

There are several limitations on using wage attachment:

1. Tenants whose income fall below the poverty income guidelines as provided annually by the Federal Office of Management and Budget are exempt from wage attachment. For other tenants, the sum attached can be no more than 10% of the net wages (gross wages less federal, state, and local taxes, FICA and non-voluntary retirement payments, union dues, and health insurance premiums), or a sum not to place the tenant's net income below the poverty income guidelines.
2. The tenant's employer is required to submit the wages attached to the prothonotary each month. The employer is allowed to keep \$5.00 from each submission for bookkeeping expenses.
3. There is a "victim of abuse" provision. This protects a tenant who is a has obtained a "Protection From Abuse" order against another family member, or who is a victim/witness against another family or household member. The tenant's wages can not be attached to cover physical damages to the rental unit caused by the abusive family or household member. However, this protection does not apply to other damages, rent, or other charges due under the lease.
4. If the landlord is holding a security deposit, it must first be credited against the judgment amount before attaching the tenant's wages.
5. Wage attachments for support take precedence over any other wage attachments. If a tenant is served with more than one attachment, then they are to be satisfied in the order in which they were served.
6. Once the judgment has been fully collected, the landlord is required to enter a satisfaction in the office of the clerk of courts where the judgment is recorded. Failure to do so within 30 days entitles the tenant to collect back 1% of the judgment amount for every additional day thereafter (up to 50% of the judgment amount).

What Still Has To Be Done

Although the legislature has made it legal for landlords to attach tenant wages, it can not dictate the court procedures to be followed to implement the wage attachment. It is up to the courts to establish the procedures to be followed.

The process of originally obtaining the judgment has not changed. The landlord must file a case with the district justice, or other court of jurisdiction. After the judgment is final (if the tenant doesn't appeal during the appeal period, or if the landlord prevails after an appeal), the judgment must be filed with the prothonotary or clerk of courts. At that point, no standard procedure for collecting the judgment by wage attachment has yet been established state wide. Because wage attachment for physical damages had been available for several years, a number of counties have already established local procedures. Most of these involve filing a motion with the court requesting a court order to attach the tenant's wages. Unfortunately, these vary somewhat from county to county. PROA would like to see a standard process adopted across the state, and will be working with the courts in an effort to accomplish this.

Efforts to Repeal

During our long struggle for wage attachment, the labor unions, and several tenant organizations have lobbied strongly against it. It is possible there will be efforts mounted to repeal the measure in future sessions of the legislature. PROA intends to strongly defend against any such attempts. We have written to all the legislators who voted in favor of our amendment thanking them for their vote, and letting them know how very important this legislation is to our industry.

PENNSYLVANIA CONSOLIDATED STATUTES
JUDICIARY AND JUDICIAL PROCEDURE (TITLE 42)
PART VII. CIVIL ACTIONS AND PROCEEDINGS
CHAPTER 81.
JUDGMENTS AND OTHER LIENS
Subchapter B. Exemptions from Execution
§ 8127. Personal earnings exempt from process.

§ 8127. Personal earnings exempt from process.

(a) General rule and exceptions.-- The wages, salaries and commissions of individuals shall while in the hands of the employer be exempt from any attachment, execution or other process except upon an action or proceeding:

- (1) Under 23 Pa.C.S. Pt. IV (relating to divorce).
- (2) For support.
- (3) For board for four weeks or less.
- (3.1) For ~~damages~~ amounts awarded to a judgment creditor-landlord arising out of a residential lease upon which the court has rendered judgment which is final. However, the amount subject to attachment shall have deducted from it any security deposit held by the judgment creditor-landlord and forfeited by the judgment debtor-tenant under section 511.1 of the act of April 6, 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of 1951, unless the security deposit has been applied to payment of rent due on the same premises for which the judgment for attachment has been entered. The judgment creditor-landlord shall have the burden of proving that such security deposit has been applied to payment of rent due on the premises herein described. The sum attached shall be no more than 10% of the net wages per pay period of the judgment debtor-tenant or a sum not to place the debtor's net income below the poverty income guidelines as provided annually by the Federal Office of Management and Budget, whichever is less. For the purposes of this paragraph, "net wages" shall mean all wages paid less only the following items:
 - (i) Federal, State and local income taxes.
 - (ii) F.I.C.A. payments and nonvoluntary retirement payments.
 - (iii) Union dues.
 - (iv) Health insurance premiums.
- (3.2) In the case of wage attachment ~~for damages~~ arising out of a residential lease, to implement the wage attachment, the judgment creditor-landlord shall comply with the Pennsylvania Rules of Civil Procedure and any applicable local rules. The judgment of the district justice, magistrate or any other court having jurisdiction over landlord and tenant matters or a judgment before the court of common pleas shall reflect that portion of the judgment which is for physical damages arising out of a residential lease.
- (4) Under the act of August 7, 1963 (P.L.549, No.290), referred to as the Pennsylvania Higher Education Assistance Agency Act.
- (5) For restitution to crime victims, costs, fines or bail judgments pursuant to an order entered by a court in a criminal proceeding.

(b) Priority.-- An order of attachment for support shall have priority over any other attachment, execution, garnishment or wage assignment.

(c) Duty of employer. --

1. For any wage attachment ~~for damages~~ arising out of a residential lease, the employer shall send the attached wages to the prothonotary of the court of common pleas within 15 days from the close of the last pay period in each month. The employer shall be entitled to deduct from the moneys collected from each employee the costs

incurred from the extra bookkeeping necessary to record such transactions, not exceeding \$5 of the amount of money so collected. If an employer is served with more than one attachment ~~[for damages]~~ arising out of a residential lease against the same judgment debtor, then the attachments shall be satisfied in the order in which they were served. Each prior attachment shall be satisfied before any effect is given to a subsequent attachment, subject to subsection (a)(3.2). Upon receipt of the wages, the prothonotary of the court of common pleas shall record and send said wages to the judgment creditor-landlord.

2. For any wage attachment ~~[other than for damages]~~ not arising out of a residential lease the employer shall send the attached withheld wages to the prothonotary of the court of common pleas to be recorded, and upon receipt, the wages shall be sent to the creditor.

(d) Duty of judgment creditor-landlord.--

1. Any judgment creditor-landlord who has received satisfaction of any judgment pursuant to this section shall enter satisfaction in the office of the clerk of the court where such judgment is outstanding, which satisfaction shall forever discharge the judgment.
2. A judgment creditor-landlord who shall fail or refuse for more than 30 days after receiving satisfaction to comply with paragraph (1) shall pay to the judgment debtor-tenant as liquidated damages 1% of the original amount of the judgment for each day of delinquency beyond such 30 days but not more than 50% of the original amount of the judgment. Such liquidated damages shall be recoverable pursuant to general rules, by supplementary proceedings in the matter in which the judgment was entered.

(e) Prohibition against discharge.-- The employer shall not take any adverse action against any individual solely because his wages, salaries or commissions have been attached.

(f) Victim of abuse.-- This section shall not apply and no wage attachment shall be issued against an abused person or victim, as defined in 23 Pa.C.S. §6102 (relating to definitions), for physical damages related to residential leases when said person has obtained a civil protection order pursuant to 23 Pa.C.S. §6101 et seq. (relating to protection from abuse), or has obtained a protective order pursuant to 18 Pa.C.S. §4954 (relating to protective orders), or is a victim-witness as defined by 18 Pa.C.S. §4951 (relating to definitions), in a criminal proceeding against a family or household member, as defined in 23 Pa.C.S. §6102, and it is determined by the court that the physical damages were caused by the family or household member.

(g) Application of section.-- This section shall apply to all judgments which remain unsatisfied or arise on or after the effective date of this subsection.

(h) Definition.-- For purposes of this section, "physical damages" shall mean the abuse of the physical makeup of the leasehold premises. ~~[Damages]~~ The term shall include, but not be limited to, the abuse of walls, floors, ceilings or any other physical makeup of the leasehold premises.