



Ohio Revised Code

Section 2329.091 Levying officer to execute writ of execution.

Effective: August 19, 1994

Legislation: Senate Bill 147 - 120th General Assembly

(A) When a judgment creditor files a praecipe for a writ of execution with a clerk of a common pleas court pursuant to section 2303.11 of the Revised Code, or with a clerk of a municipal court pursuant to section 1901.23 of the Revised Code, or with a clerk of the county court pursuant to section 1907.47 of the Revised Code, the clerk shall issue a writ of execution to the levying officer and cause a notice and a hearing request form to be served upon the judgment debtor. The court, in accordance with division (E) of this section, shall appoint a levying officer who shall immediately and simultaneously execute the writ of execution and serve the notice and the hearing request form upon the judgment debtor. If the levying officer is unable to obtain personal service upon the judgment debtor, the levying officer shall serve the notice and hearing request form upon the judgment debtor by both certified mail and regular mail at the judgment debtor's last known address.

(B)(1) The notice to the judgment debtor shall be in substantially the following form:

"(Name and Address of Court)

(Case Caption)_____ Case No_____

NOTICE TO THE JUDGMENT DEBTOR

You are hereby notified that this court has issued a writ of execution in the above case in favor of (name and address of judgment creditor), the judgment creditor in this proceeding, directing that some or all of your property be sold according to law and the proceeds of the sale be delivered to the clerk of this court to be used to satisfy all or part of your debt to the judgment creditor. This writ of execution was issued on the basis of the judgment creditor's judgment against you that was obtained in (name of court) in (case number) on (date).

The laws of Ohio and the United States provide that certain property cannot be taken from you to pay a debt. The law exempts from execution your interest in or right to specified property as



described in Ohio Revised Code section 2329.66(A). The substance of this statutory provision is attached to this notice.

If you believe that some or all of your property is exempt from execution, you may request a hearing before this court by filling out the enclosed form for requesting a hearing, or a substantially similar form, and delivering the request for hearing to the office of the clerk of this court no later than the end of the fifth business day after you receive this notice. In the space provided on the form, you may state your reason for claiming that some of your property is exempt from execution, but you are not required to do so. If you do not state reasons on the form, the court will permit you to state your reasons at the hearing. If you do state reasons on the form, you may also state other reasons at the hearing.

If you request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, the hearing will be conducted no later than twelve days after the court receives your request, unless you request an earlier hearing due to an emergency, in which case the court will schedule the hearing as soon as practicable. At the hearing, the court will consider the amount of your property that is exempt from execution and the amount that can be used to satisfy all or part of the judgment you owe to the judgment creditor. The court will not hear or consider any objections to the judgment itself at the hearing.

If you do not request a hearing by delivering your request prior to the end of the fifth business day after you receive this notice, you give up your right to a hearing and to assert reasons why some or all of your property should not be used for payment of your debt to the judgment creditor.

If you have any questions concerning this matter, you may contact the office of the clerk of this court. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, contact the local bar association or your local legal aid or legal services office.

_____ - Clerk of the Court

Date"



(2) The notice that is served upon the judgment debtor shall, securely and prominently, have attached to it a document setting forth the substance of division (A) of section 2329.66 of the Revised Code.

(C) The hearing request form that is served upon the judgment debtor shall have attached to it a postage-paid, self-addressed envelope or shall be on a postage-paid self-addressed postcard, and shall be in substantially the following form:

"(Name and Address of Court)

Case Number _____ Date _____

REQUEST FOR HEARING

I believe that some or all of my property may be exempt from execution in the above case and request that a hearing be held no later than twelve days after the delivery of this request to the court.

OPTIONAL

I request that a hearing be held as soon as possible due to emergency circumstances as follows:

I believe that some or all of my property may be exempt from execution for the following reasons:

(Optional)



(Name of Judgment Debtor) - _____ - (Address of Judgment Debtor) -

_____ - (Telephone Number of Judgment Debtor) -

(Signature of Judgment Debtor) - _____

(Date)

WARNING: IF YOU DO NOT DELIVER THIS REQUEST FOR HEARING OR A REQUEST IN A SUBSTANTIALLY SIMILAR FORM TO THE OFFICE OF THE CLERK OF THIS COURT WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF IT, YOU WAIVE YOUR RIGHT TO A HEARING, AND SOME OR ALL OF YOUR PROPERTY WILL BE USED TO SATISFY ALL OR PART OF YOUR DEBT TO (JUDGMENT CREDITOR'S NAME)."

(D) A judgment debtor shall receive a hearing in accordance with this division if he delivers a written request for a hearing to the clerk of the court within five business days after receipt of the notice required under division (A) of this section. The judgment debtor may set forth on the request its reasons for believing that some or all of its property is exempt from execution, but neither its inclusion of reasons on the request nor its failure to include reasons constitutes a waiver of any defense or affects its right to produce evidence at any hearing.

If the judgment debtor makes the request within the prescribed time, the court shall schedule a hearing no later than twelve days after the court receives the request, unless the judgment debtor advises the court that an emergency hearing is necessary, in which case the court shall schedule the hearing as soon as practicable after the request is made. The clerk of court shall send notice of the date, time, and place of the hearing to the parties in accordance with division (G) of this section. The hearing shall be limited to a consideration of the amount of the property of the judgment debtor that can be executed upon to satisfy all or part of the debt owed to the judgment creditor.

If the judgment debtor does not request a hearing within the prescribed time, the court may grant a



hearing if, prior to the sale of the property by the levying officer, the judgment debtor establishes a reasonable justification for its failure to request the hearing within the prescribed time.

(E) The court shall appoint a levying officer to immediately and simultaneously execute the writ of execution and serve the notice and the hearing request form required by division (A) of this section upon the judgment debtor. The levying officer shall be the bailiff, a deputy bailiff, or an ex officio deputy bailiff of the court as specified in Chapter 1901. of the Revised Code or another chapter of the Revised Code, or the sheriff of the appropriate county. Notwithstanding any contrary provision of the Revised Code, if the bailiff, deputy bailiff, ex officio deputy bailiff, or sheriff is not able to perform the duties of the levying officer in accordance with this section, the court, upon application by the judgment creditor, shall appoint a disinterested person to serve as the levying officer. The disinterested person shall post a bond with the clerk of the court in an amount set by the court to ensure the faithful performance of his duties.

(F) If the nature of the property executed upon precludes the levying officer from taking immediate physical possession of the property, the court, upon application by the judgment creditor or the levying officer, shall appoint a custodian of the property until the levying officer is able to take physical possession of the property. If the person appointed as custodian converts the property, fails to conserve it, or places it beyond the reach of the levying officer, the custodian shall be subject to a citation for contempt.

(G) The clerk of the court shall send any notice of hearing to the parties by regular mail or otherwise in accordance with Rule 5 of the Rules of Civil Procedure.

(H) If a hearing is conducted, the court shall determine what portion, if any, of the property of the judgment debtor is exempt under section 2329.66 of the Revised Code and shall issue an order to the levying officer setting forth that determination and ordering the levying officer to sell the nonexempt property according to law.

(I) If it is necessary to ascertain the amount or value of the judgment debtor's personal property that is exempt under section 2329.66 of the Revised Code, it shall be estimated and appraised in accordance with section 2329.68 of the Revised Code.