



## Ohio Revised Code

### Section 2715.045 Issuing order of attachment without notice or hearing.

Effective: June 26, 2003

Legislation: House Bill 95 - 125th General Assembly

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(A) Upon the filing of a motion for attachment, a court may issue an order of attachment without issuing notice to the defendant against whom the motion was filed and without conducting a hearing if the court finds that there is probable cause to support the motion and that the plaintiff that filed the motion for attachment will suffer irreparable injury if the order is delayed until the defendant against whom the motion has been filed has been given the opportunity for a hearing. The court's findings shall be based upon the motion and affidavit filed pursuant to section 2715.03 of the Revised Code and any other relevant evidence that it may wish to consider.

(B) A finding by the court that the plaintiff will suffer irreparable injury may be made only if the court finds the existence of either of the following circumstances:

(1) There is present danger that the property will be immediately disposed of, concealed, or placed beyond the jurisdiction of the court.

(2) The value of the property will be impaired substantially if the issuance of an order of attachment is delayed.

(C)(1) Upon the issuance by a court of an order of attachment without notice and hearing pursuant to this section, the plaintiff shall file the order with the clerk of the court, together with a praecipe instructing the clerk to issue to the defendant against whom the order was issued a copy of the motion, affidavit, and order of attachment, and a notice that an order of attachment was issued and that the defendant has a right to a hearing on the matter. The clerk then immediately shall serve upon the defendant, in the manner provided by the Rules of Civil Procedure for service of process, a copy of the complaint and summons, if not previously served, a copy of the motion, affidavit, and order of attachment, and the following notice:

"(Name and Address of the Court)



(Case Caption) Case No. \_\_\_\_\_

## NOTICE

You are hereby notified that this court has issued an order in the above case in favor of (name and address of plaintiff), the plaintiff in this proceeding, directing that property now in your possession, be taken from you. This order was issued on the basis of the plaintiff's claim against you as indicated in the documents that are enclosed with this notice.

The law of Ohio and the United States provides that certain benefit payments cannot be taken from you to pay a debt. Typical among the benefits that cannot be attached or executed on by a creditor are:

- (1) Workers' compensation benefits;
- (2) Unemployment compensation payments;
- (3) Cash assistance payments under the Ohio works first program;
- (4) Benefits and services under the prevention, retention, and contingency program;
- (5) Disability financial assistance administered by the Ohio department of job and family services;
- (6) Social security benefits;
- (7) Supplemental security income (S.S.I.);
- (8) Veteran's benefits;
- (9) Black lung benefits;
- (10) Certain pensions.



Additionally, your wages never can be taken to pay a debt until a judgment has been obtained against you. There may be other benefits not included in this list that apply in your case.

If you dispute the plaintiff's claim and believe that you are entitled to possession of the property because it is exempt or for any other reason, you may request a hearing before this court by disputing the claim in the request for hearing form, appearing below, or in a substantially similar form, and delivering the request for hearing to this court at the above address, at the office of the clerk of this court, no later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the claim in the space provided on the form; however, you are not required to do so. If you do state your reasons for disputing the claim, you are not prohibited from stating any other reasons at the hearing, and if you do not state your reasons, it will not be held against you by the court and you can state your reasons at the hearing. If you request a hearing, it will be held within three business days after delivery of your request for hearing and notice of the date, time, and place of the hearing will be sent to you.

You may avoid a hearing but recover and retain possession of the property until the entry of final judgment in the action by filing with the court, at the office of the clerk of this court, not later than the end of the fifth business day after you receive this notice, a bond executed by an acceptable surety in the amount of \$\_\_\_\_\_

If you do not request a hearing or file a bond before the end of the fifth business day after you receive this notice, possession of the property will be withheld from you during the pendency of the action. Notice of the dates, times, places, and purposes of any subsequent hearings and of the date, time, and place of the trial of the action will be sent to you.

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Clerk of the Court

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Date"



(2) Along with the notice required by division (C)(1) of this section, the clerk of the court also shall deliver to the defendant a request for hearing form together with a postage-paid, self-addressed envelope or a request for hearing form on a postage-paid, self-addressed postcard. The request for hearing shall be in substantially the following form:

"(Name and Address of Court)

Case Number \_\_\_\_\_ Date \_\_\_\_\_

### REQUEST FOR HEARING

I dispute the claim for possession of property in the above case and request that a hearing in this matter be held within three business days after delivery of this request to the court.

I dispute the claim for the following reasons:

\_\_\_\_\_

(Optional)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Name of Defendant)

\_\_\_\_\_

(Signature)

\_\_\_\_\_



(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 POSSESSION OF THE PROPERTY WILL BE WITHHELD FROM YOU DURING THE PENDENCY OF THE ACTION."

(D) The defendant may receive a hearing in accordance with section 2715.043 of the Revised Code by delivering a written request for hearing to the court within five business days after receipt of the notice provided pursuant to division (C) of this section. The request may set forth the defendant's reasons for disputing the plaintiff's claim for possession of property. However, neither the defendant's inclusion of nor failure to include such reasons upon the request constitutes a waiver of any defense of the defendant or affects the defendant's right to produce evidence at any hearing or at the trial of the action. If the request is made by the defendant, the court shall schedule a hearing within three business days after the request is made, send notice to the parties of the date, time, and place of the hearing, and hold the hearing accordingly.

(E) If, after hearing, the court finds that there is not probable cause to support the motion, it shall order that the property be redelivered to the defendant without the condition of bond.