

The Lender's Source: Garnishment Law Update

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New Garnishment Laws Require Prompt Attention from Financial Institutions

On April 12, Governor Nathan Deal signed into law a major overhaul of Georgia's garnishment procedures. The new garnishment laws, which become effective on May 12, 2016, feature several important changes that financial institutions must recognize. These include:

- a limited five-day effectiveness period for summonses of garnishment;
- a drastically shortened 15-day answer deadline for financial institutions; and
- new notices that must be mailed to customers subjected to garnishment.

Financial institutions must act quickly to prepare for the onset of these new requirements in the coming weeks.

Shortened Effective Period of Garnishment

Under the new law, a summons of garnishment served on a financial institution is only effective to reach funds on deposit at the institution at the time of service or within five days thereafter. This is a major change from prior law, which allowed a summons of garnishment to capture funds on deposit at any time between the date of service and the date the institution filed its answer—which had to be at least 30 days, but could be as many as 45 days, after service.

Shortened Deadline to File Answer

Importantly, the new law requires a financial institution to file a response (an “answer”) to a garnishment suit within 15 days of being served with the suit, and to submit along with the answer all account funds subject to garnishment. This 15-day deadline is a major change from the prior law, which, again, allowed up to 45 days to file an answer and submit garnished funds. The response time has been drastically shortened. If the institution does not file an answer within this 15-day period, the court can enter judgment against the institution itself for the full amount sought in the garnishment suit. This is known as a “default

judgment,” and can have the effect of making the institution liable for payment of its customer's debt.

If a financial institution wishes to file an answer ahead of the 15-day deadline, it may do so as long as at least five days have passed after the institution was served with the garnishment suit. An answer cannot be filed fewer than five days after service. The only exception is where the garnishment debtor does not have any accounts or safe deposit boxes with the institution—in that situation, the institution can file an answer at any time within the 15-day period.

Safe Deposit Boxes of Garnishment Debtor

If the garnishment debtor maintains a safe deposit box at the institution, the institution must state this fact in its answer. Unlike account funds, however, the safe deposit box contents are not delivered to the court with the answer. Instead, the institution must restrict access to the box until the court orders otherwise, or until 120 days pass from the date the answer was filed. Once 120 days pass without any court order addressing the box and without the court extending the time period for restricted access, the institution can again allow the customer to access the box in accordance with the safe deposit agreement.

New Deadline Requirements Must Not be Ignored

It is crucial for financial institutions to timely adapt to the deadline changes in the new garnishment laws. If an institution continues to follow earlier garnishment procedures (which required an institution to wait at least 30 days, and allowed as many as 45 days, before filing an answer) after May 12, the institution will make itself subject to default judgment in a garnishment suit filed after that date. Institutions must put procedures into place to allow answers to be filed much more quickly than in the past, and must change their calendaring practices to accommodate the five-day garnishment period and the five-day minimum and 15-day maximum answer deadlines that will be effective for garnishments filed after May 12, 2016. Failure to do so may be very costly due to default judgments and improper account withholdings.

Exemption Notice and Claim Forms Must be Mailed to Customer

The new law requires that the customer be given written notice of potential exemptions from garnishment, and given a form for use in claiming such exemptions. This requires action of both the plaintiff that filed the garnishment suit and the financial institution served with the garnishment.

Along with the other garnishment documents to be served on the institution, the plaintiff must include a "Notice to Defendant of Right Against Garnishment of Money, Including Wages and Other Property" and a "Defendant's Claim Form." The specific contents and formats of these two documents are mandated by law. When the institution files its answer with the court, the institution must also mail the Notice and Claim Form documents, along with a copy of the answer, to the customer via regular mail at the customer's last known address. In other words, the plaintiff serves the Notice and Claim Form documents on the institution, and the institution in turn mails these documents to the customer.

Readers of the new law will see that the plaintiff itself is also required to serve the Notice and Claim Form documents directly on the customer. This is a separate requirement, and does not relieve the institution from its obligation to mail the Notice and Claim Form documents to the customer.

Unfortunately, the Notice and Claim Form documents mailed to the customer are likely to result in situations where the customer contacts the bank for more guidance on whether account funds are exempt from garnishment, or on how best to assert the right to an exemption before the court. The institution and its employees must refrain from giving legal advice to the customer. If the customer desires further guidance, the institution must suggest that the customer contact a licensed attorney for help. The Notice form itself advises the customer to see an attorney if the customer desires legal assistance. The institution's employees must take a similar approach when dealing with the customer.

New Legal Templates for Answer of Garnishee

As part of the new law, the legislature has provided new legal templates for use in filing the answer and other documents. If an updated answer form is not provided by the plaintiff, the institution

should check with its counsel to obtain the most recent statutory template for use.

Changes Not Effective Before May 12, 2016

The new laws discussed above do not become effective until May 12. Prior to that date, the old (current) garnishment laws and procedures will be in place and will be controlling. This means, for example, that answers must not be filed until at least 30 days after service, and that the garnishment summons may reach funds on deposit at any time between service of the garnishment suit and the filing of the answer (rather than merely the five-day post-service period). Financial institutions must take care to follow the proper procedures for the given time in question.

Have Questions? Need Help?

If you have questions regarding the matters addressed in this Update or other matters affecting your institution, please feel free to contact us to see how we can help.

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