A Landlord's Guide to Getting and Collecting Upon Judgment Liens in Ohio

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Important Disclaimer:

This work is put together for landlords as an informational guide to getting and collecting judgments in Ohio. It is not meant to be, nor should it be construed as legal advice. By purchasing this work, you should know that you have not retained the legal services of either Eric E. Willison or Andrew J. Ruzicho, II.

Further, the information contained in this work is applicable only to the state of Ohio. Different states have different laws, and what may be the case in one state may or may not be the case in others.

The purpose of this work is not to be a substitute for an attorney knowledgeable in the area of debtor/creditor rights. There is no substitute for hiring an attorney knowledgeable in the area of the law relevant to you and who is certified to practice in your jurisdiction. You would be foolish to try to use this work as a guide to collecting significant amounts owed to you.

The purpose of this work is to give the average landlord sufficient knowledge of the debt collection process that they can better work with such attorneys to collect the amounts due to them. The authors of this work can make no claim or guarantee that the forms supplied herein will result in a successful collection effort. Further, each court in Ohio may have its own local rules and those local rules may have required forms which are at variance with the forms provided herein. The authors of this work cannot review the ever-changing local rules of every court in Ohio. You should carefully read the local rules of your court before undertaking any legal action.

Lastly, the information provided herein was researched and written in the first three months of 2007. Laws change over time, and persons reading this work for informational purposes should keep this in mind and act accordingly.

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Chapter One: Introduction

There are three stages to any collections process. The first is considering whether or not to put yourself into the position of having to deal with the other person. The second is bringing a lawsuit against that person. The last comes after you have been fortunate enough to obtain a court judgment and involves actually going about collecting on the judgment. Of these three stages, the first is the most important, the second is time consuming, and the third is the hardest part.

I. History Illustrates the Problem

It used to be that if you won a case against another person and they refused to pay on the judgment, the debtor could be thrown in prison for failure to pay. In England, a group of "rum-looking coves" also know as "bums" would roam around the street with long wooden staffs with crowns on the tips. These staffs were called "Tip Staffs." If the holders of such a staff saw a debtor and could touch him with the staff, then such debtor had to submit to arrest for debt, or he would also be guilty of resisting a lawful arrest.

Putting a debtor into incarceration did serve a purpose. If the fellow had the money to pay you, but was simply not doing it, incarceration was a pretty strong motive to get the judgment creditor paid. But even though the creditors knew that from prison (also called "toll houses" or "sponging houses") most debtors could not pay, they still imprisoned the debtor because a relative might bail the debtor out. Lastly, such incarceration, or the real fear of it, served as an example to others of the importance of paying on their debts.

II. Remedies Today

There is no debtor's prison anymore (except in Domestic Court, wherein if someone doesn't pay on spousal or child support obligations he can be sentenced to jail for contempt of court). So these days a creditor can only proceed against a debtor's property, meager or nonexistent though it may be.

A. Upfront Remedies The Most Important

This little trip down through history and its comparison with remedies today illustrates an unfortunate truth for creditors. That truth is that while the law does provide you with remedies, your real remedies, the only truly effective remedies, arise from the decisions you make up front, to wit: the decision to loan or not loan money, to enter into a contract or not enter into a contract with someone. Trial lawyers have an old saying that illustrates this: "Getting a judgment is easy. Collecting upon it is hard."

1. Background Checks of Tenant and Co-Signer

Armed with the knowledge that you cannot get blood from a stone, nor can you collect money from the penniless, you should be very careful in checking the background of persons

who may become indebted to you. Thus if you are thinking about renting out your place to a tenant, looking at this person's background and finding out that they have been evicted from the last four places they lived, is going to seem a really good idea after they trash your house and fail to pay rent for three months. Even if you have to pay for someone to do a credit check on the tenant and his co-signer, it's like hiring a taxi when you are too drunk to drive. You may think you can get home okay, but when you are standing before the judge five days later, you will wish you had spent $15.00 on the cab ride rather than $2,500.00 for the lawyer.

One word of caution though, while any eviction on the tenant's record should raise all sorts of red flags, consider the possibility that landlords don't always act rationally. I once had a client/tenant who was a 4 year resident at the same place. They filed an eviction against her in 2005, but dropped it. She then lived in the same place for another year and a half, when they filed another eviction against her. They dropped it again. The problem arose out of a personality conflict between the rental manager and the tenant, such that the rental manager was not accepting her rent and trying to get her out because of personal animosity.

The point is that here was a tenant who had never had an eviction in the 10 years she had been renting until she came across a particular rental manager. Passing such a tenant by would not be in your interest. So if there is only a single eviction on the person's record, or if there are multiple evictions which were dismissed with the tenant staying on after the matter was settled, you may still want to consider the tenant for your place.

2. Co-Signers

The second big truth for creditors to learn beforehand is that you can always insist upon a solvent co-signer. Don't listen to tenants who say that since they are over 18, they don't need a co-signer. If they are over 18 and recently won the lottery, then that's all fine and good. But most young people don't have money stored away like their parents do.

You'll wish like heck that you had gotten your tenant's father's signature as co-signer upon the lease. It is a great deal easier to collect money from the chief of staff of the Neurology Department at Riverside Hospital than it is from his deadbeat daughter. So take the steps you need to protect yourself up front, and you will be happier in the end.

Chapter Two: Getting a Judgment

Before you can get money from someone who will not pay you, you will have to get a valid judgment against them in a court of law. You can't just walk up to a person's bank, show them a contract wherein they agreed to rent out some property from you, state that they have not paid, and demand that the bank fork over the money in the person's account. The bank is going to tell you to get lost.

A. The Rules of Civil Procedure

This is going to be a crash course on what we who went to law school call Civil Procedure. Civil Procedure is basically the rules of the game. In fact, my Civ Pro teacher from law school, Professor Bradley Smith, reveled in bringing in the children's board game "Chutes and Ladders" on the first day of class. With great fanfare he would open the game up and show how the game's instructions were printed on the inside of the box top. He was showing us by analogy that The Rules of Civil Procedure were just like the rules to the game in the box top. The man went on to be a member of the Federal Elections Commission, an even greater honor than being one of my favorite law school professors.

There are two systems of justice, one is the criminal system, which does not concern us (even though you doubtless feel that what your debtor is doing to you is a crime) and there is the civil system which is the system in which we will be playing our game. There are different types of civil courts, and the main important difference for our purposes is the amount in controversy limit. Small claims courts and municipal courts will have limits to how much they can award. For instance, at the time of this writing, the small claims court in Franklin County can only hear cases and controversies wherein up to $3,000.00 is at stake. The Franklin County Municipal Court can only hear cases and controversies wherein up to $15,000.00 is at stake. The Franklin County Court of Common Pleas has an unlimited jurisdictional amount.

1. The Pleading Stage

All law suits are started by the filing of a complaint by the Plaintiff(s) against the Defendant(s). The Complaint is a short plain statement of the facts that gives the other side enough information to know that they are being sued and why. Often, you will file an eviction action against the tenant. At that time, if you think that the tenant and his co-signer are solvent enough and if there is enough money owed to be worth your time, you will want to include a second claim for relief for money damages. Perhaps this is for failure to pay rent, and/or perhaps it is for physical damages to the premises beyond normal wear and tear.

a. Service of Process

It should come as no surprise that you cannot sue someone in secret. This means that the Rules of Civil Procedure require that you must do what you can to put an actual copy of the Complaint you have filed into the hands of the opposing party. For instance, there was a case we read about in law school wherein the Defendant was a resident of the Waldorf Astoria Hotel in New York. The doormen would not let the process servers into the hotel in order to serve a copy of the complaint upon one of their tenants.

The Plaintiff hired a private eye who figured out what window was that of the Defendant. The private eye wrapped the complaint around a good sized rock and threw it through the window. The private eye then went and paid for the damages. The court considered this to be adequate, though unconventional, service of process.

Today there is little need of such shenanigans. Civil Rule 4 covers service of process and states that if the Plaintiff sends out the Complaint by certified mail, and it comes back either refused or unclaimed, then the court can send the Complaint out by regular mail, and if it is not returned by the post office, then that is considered good service. Once there is initial good service of process, almost all further documents filed in the matter need only be mailed by ordinary U.S. Mail, postage pre-paid.

2. Sufficiency of Claims for Relief

Some Pro Se Plaintiffs (persons who don't hire lawyers when they file their lawsuits) don't have the needed specificity in the wording of their complaint. If the Complaint does not have enough specificity in it for the Defendant to formulate an answer, the Defendant should file a Motion for a More Definite Statement. If the Court grants this Motion, it will instruct the Plaintiff to redraft his Complaint to be more specific as to the facts and the claim(s) for relief of the Plaintiff. The failure of the Plaintiff to so amend his Complaint may lead to its eventual dismissal. A sample complaint is provided at the end of the chapter so that you can use it as a model for yours.

If the complaint has enough facts, but the Defendant feels that even if all of those facts were true, the complaint does not state a cause of action for which legal relief may be granted, the Defendant can make a Motion to Dismiss Pursuant to Civil Rule 12(B)(6).

An example might be that you sue your debtor for wearing a green shirt. There is no statutory or case law in Ohio which prohibits the wearing of green shirts. In this situation, your debtor would probably move for the Court to dismiss the case pursuant to Civil Rule 12(B)(6) for your failure to state an actionable claim for relief. In other words, even if everything in the Plaintiff's complaint is true, the Plaintiff still loses because the actions or inactions described in the complaint don't amount to a hill of beans.

If the Judge overrules the 12(B)(6) Motion, then the debtor will have to file an Answer to the Complaint. The Answer is simply a matter of going through the Complaint, line by line, and denying or admitting the accusations. Defendants often wish to simply enter a general denial stating that they deny all of the allegations in the Complaint of the Plaintiff. But this is improper. There are almost always some things in every Complaint that both the Plaintiff and the Defendant agree on. In the landlord tenant context, they would probably both agree about the address of the apartment, and how much the rent was, and how much the security deposit was for.

In the armed forces, there are three answers you can give your drill sergeant in basic training. Those answers are "Yes sir", "No sir", and "No excuse sir." There are three answers to any allegation in a Complaint when your debtor drafts his Answer. He can admit the allegation, deny the allegation, or deny the allegation for lack of knowledge. If a single sentence contains several allegations, some of which are true, some of which are false, then the answer can be in the same form, but it must inform the other side what is denied, what is admitted, and what is denied for lack of knowledge.

For instance, let's say that Paragraph Three of the complaint states that: "Defendant did not pay the rent for April, May or June of 2007." The tenant agrees that he did not pay the rent for May or June, but has a cancelled check for April, 2007 which the landlord cashed. Strictly speaking, the Defendant might deny the whole paragraph, since, literally, it is not true. But the better practice is to answer as follows: "Defendant admits that he has not paid the rent for May or June of 2007, but denies the remaining allegations of Paragraph 3."

If the Defendant fails to file an Answer within 28 days of getting served, then the Plaintiff can move for a default judgment against the Defendant for failure to answer. But if the Defendant has appeared before the Court, yet for some reason failed to file an Answer, then the Court must hold a hearing on whether or not to grant the default judgment. If the Defendant still does not show up, then a default judgment will be granted and the Plaintiff wins. A sample of a default judgment motion is attached hereto.

But such wins are usually a hollow victory. Judges are way too willing to overturn a default judgment if the Defendant makes a Motion Pursuant to Civil Rule 60(B) wherein he argues some sob story of justification for his failure to respond. So don't think that having a default judgment ends your case. Your debtor still has a fighting chance at getting it overturned and getting his case heard and decided on the merits. On the other hand, do not count on such special treatment yourself. If all you have is a 60(B) motion and a sob story, you don't have much going for you.

IN THE MUNICIPAL COURT OF FRANKLIN COUNTY, OHIO

Larry Landlord **123 Main Street** **Columbus, Ohio 43221**	: :	 **Case No.**
Plaintiff,	:	**Magistrate:**
v.	:	**Forcible Entry and Detainer**
Thomas Tenant and all other occupants **456 Town Street Apt. #102** **Columbus, Ohio 43221**	: :	**Action and Complaint for** **Damages**
Defendants.		

FORCIBLE ENTRY AND DETAINER ACTION AND COMPLAINT FOR DAMAGES

First Claim for Relief: Possession of the Premises

1. Defendants Thomas Tenant and all other occupants, on or before September 7, 2001, as tenants of the Plaintiff, Larry Landlord., under an express written lease agreement (a true and accurate copy of which has been attached hereto as exhibit A) entered upon the following described premises, situated in the City of Columbus and in Franklin County of the state of Ohio and known as 456 Town Street, Apartment # 102, Columbus, Ohio 43221.
2. The term of this tenancy expired on September 30, 2002.
3. Defendants have violated the terms of the written lease agreement by failing to pay rent in a timely fashion for the month of September, 2002 and have held over the term of the tenancy without permission or authorization of the Plaintiff.
4. Defendants are presently in violation of the terms of the lease.

5. Plaintiff caused a three-day notice to vacate (a true and accurate copy of which has been attached hereto as exhibit b) to be placed upon the door of Defendants' residence on September 17, 2002.
6. Defendants are in breach and are still presently holding possession of the premises against the wishes of the Plaintiff.

Second Claim for Relief: Monetary Damages

7. Defendants have failed to pay rent for the month of September, 2002, in the amount of $515.00.
8. Defendants' failure to pay rent to Plaintiff is a breach of the terms of the lease agreement signed between Defendants and Plaintiff.
9. Defendants' breach of the lease agreement has caused damages to the Plaintiff in the amount of $515.00.

Wherefore, Plaintiff demands a writ of restitution for the premises so that possession may be returned to Plaintiff, along with damages in the amount of $515.00 which will fully and fairly compensate it for its damage together with attorney fees, costs, and any other relief, both legal or equitable to which it may be entitled.

Respectfully submitted,

____

Larry Landlord
123 East Main Street
AnyTown, Ohio
(614) 111-1111
Plaintiff Pro Se

2. The Discovery Period

Once the Complaints and Answers have been filed, you will start into what is called the Discovery Period. A long time ago, the Court system decided that it did not like to have its cases decided upon surprises and ambushes. To see how the system used to work before the Discovery Rules were implemented, you need only to watch an episode of the old television show *Perry Mason*.

The Courts decided that if each of the parties knew what the other party had on each other (evidence wise), a lot of cases would get resolved earlier in the process through settlement. Courts always favor settlement over trial. Nine out of ten cases are settled, and if they weren't, if you think that wait for trial is long right now, try it when no one is settling cases. Thus the Discovery Rules were adopted.

Most courts' local rules state that discovery requests do not have to be filed with the court, but are to be handled informally between the parties unless there is a dispute wherein guidance or an order of the court is needed. Whenever you send out discovery, it is usually permissible to file a one page notice with the court that you have sent discovery to the other party. A sample notice is provided at the end of this chapter.

a. Requests for Production of Documents

You can send your opponent in litigation Requests for Production of Documents, asking for copies of everything that they have in their possession that may be useful to your side at trial. If you don't have a legible copy of the contract, you can request that the other side provide it to you. If you don't have a copy of the letter that the debtor sent to you telling you he was not going to hold up his end of the bargain, then you can request it. Your debtor can ask for documents like repair records and bills for material and labor if you are alleging that the debtor caused property damages. You can ask for pictures or videos if they exist and bear upon the case.

I have provided a sample Request for Production of Documents immediately below. You don't have to follow it exactly. You can alter and add requested documents as needed. So long as the documents you request are relevant to the lawsuit or reasonably calculated to lead to the production of relevant evidence, and so long as the documents sought aren't privileged or unduly burdensome to obtain, the court should require that the opposing party produce them: