

MISSOURI CHILD SUPPORT ENFORCEMENT ASSOCIATION



Exotic Enforcement Remedies

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MCSEA 46th Annual Training Conference

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Garnishments

1. If an FSD Order to Withhold is a Toyota; garnishments come in all models, from a Ford Pinto to a Lamborghini
 - a. Rare cases where an OTW wouldn't do just fine
 - b. An OTW will do *almost* everything a garnishment will do
2. Rule 90
3. Procedural things to note:

- a. Specific definition of property “subject to garnishment”**

(d) "Property subject to garnishment" is all goods, personal property, money, credits, bonds, bills, notes, checks, choses in action, or other effects of debtor and all debts owed to debtor. "Property subject to garnishment" does not include funds of the debtor on deposit with a bank or other financial institution in an account in which all funds are:

- (1) Deposited electronically on a recurring basis, and
- (2) Reasonably identified as funds exempt from garnishment pursuant to Section 513.430.1(10)(a), (b), or (c), RSMo;

Rule 90.01(d)

- b. Continuous wage garnishment**

Private counsel's very own OTW

"Continuous wage garnishment" is the garnishment of earnings, as defined in section 525.030, RSMo, that does not have a return date and instead remains in effect until the judgment is paid in full or until the employment relationship is terminated, whichever occurs first.

Rule 90.01(e)

- c. Five choices of return dates** (new since 2006)

If not using the continuous wage garnishment, counsel may choose a return date of either 30, 60, 90, 120, 150 or 180 days after filing the request for the writ.

Rule 90.02

- d. Form interrogatories**

The rule specifies the interrogatories. Use the standard form interrogatories.

e. **Answers and Objections**

- i. Garnishee files answers within 10 days after return date
 1. BUT for continuous wage garnishments, within 20 days from date of service on garnishee
- ii. Exceptions filed within **later** of:
 1. 20 days after service of answers, or
 2. 20 days after return date of writ
 3. For continuous wage garnishment, exceptions filed no later than 20 days after service of answers
- iii. Response to exceptions filed within 20 days after service of exceptions

Rule 90.07(b),(c),(d)

f. **Automatic Disbursement**

No pay-in; pay-out orders anymore

Generally, ten days to disburse to garnishor without court order

Rule 90.11

g. **Specific fee provisions**

- i. \$20 fee for “trouble and expense or answering”
- ii. financial institutions can charge a different amount “previously agreed upon between the garnishee and the judgment debtor”
- iii. garnishee may apply for more costs, including an attorney fee “reasonably incurred in answering the interrogatories” and the court “may make such award as it deems reasonable.”
 1. Additional fee application filed on or before date garnishee makes payment or delivers property into court

Rule 90.12(a)

h. **Reporting Judgment Balance – Payment on the Record**

For continuous wage garnishments, or any cases where the garnishor elects to have payments made directly to counsel, the garnishor must file a statement of judgment balance:

- i. All payments received within past six months; AND
- ii. Remaining unsatisfied portions of judgment
- iii. Must be filed within 15 days after the close of each six-month period
- iv. Mailed to garnishee and judgment debtor
- v. Failure to file results in garnishment terminated

Rule 90.19

4. **Forms:** Use OSCA forms at home page / quick links to forms / Civil Forms

a. Garnishment application

<https://www.courts.mo.gov/file.jsp?id=104656>

b. Interrogatories

<https://www.courts.mo.gov/file.jsp?id=101756>



Executions

1. Labor-intensive
 - a. Lawyer handles all the details
 - b. Coordination with sheriff's office
 - c. Coordination with others necessary to complete the levy and sale
2. Rule 76
3. Seize real and personal property belonging to the judgment debtor
 - a. Currently belonging to debtor
 - b. Debtor's heirs if no estate administration (Rule 76.03)
 - c. Fraudulent conveyance may be litigated in a challenge to a writ of execution
4. Return date (Rule 76.04):
 - a. 30 – 90 days for personal property
30 – 180 days for real property or sooner once sold
5. Executions are served and conducted by the sheriff of the county where the property is located (Rule 76.05)
6. Levy (Rule 76.06):
 - a. Personal property that can be seized: sheriff takes possession “unless such seizure is impracticable”
 - b. Otherwise, notice posted on personal property
 - c. Real estate: sheriff endorses the legal description on the execution form
 - i. In reality, the lawyer fills out the form
 - ii. Once an execution is filed, subsequent to the judgment lien, it's a sign that the land really will be sold to satisfy a debt
7. A levy creates a lien on both personal property and real estate (almost always previously encumbered by judgment lien anyway) (Rule 76.07)
8. Exemptions (Rule 76.075).
 - a. Sections 513.430 and 513.440 set forth list of property exempt from execution.
 - b. No exemptions for a party leaving the state. 513.425
 - c. Bankruptcy proceedings affect exempt property. 513.427

- d. Any property that is encumbered with a lien (such as a car loan) is not exempt. 513.436
- e. The exemptions do not apply for maintenance and child support debts.

452.140. No property exempt from attachment or execution, when

No property shall be exempt from attachment or execution in a proceeding instituted by a person for maintenance, nor from attachment or execution upon a judgment or order issued to enforce a decree for alimony or for the support and maintenance of children. And all wages due to the defendant shall be subject to garnishment on attachment or execution in any proceedings mentioned in this section, whether the wages are due from the garnishee to the defendant for the last thirty days' service or not.

- 9. After seizure, court may appoint a receiver (who may be the sheriff) “or some other person or corporation.” (Rule 76.08)
 - a. Lawyer’s responsibility
 - b. Dependent on value of seized property
- 10. The judgment debtor may elect which property will be seized and sold, provided the proceeds therefrom will be sufficient to satisfy the debt. (Rule 76.09)
- 11. Persons claiming an interest in the seized property may intervene. (Rule 76.10)
- 12. If selling real estate, the sheriff can divide the property “if susceptible of division” to satisfy the debt; unless the debtor wants the entire lot sold
 - a. Lawyer’s responsibility
 - b. Remember receiver under Rule 76.08
- 13. “Execution sales of land shall be held at the courthouse door designated in the notice of sale.” (Rule 76.15)
- 14. Sold at auction to the highest bidder “for ready money” or, “If approved by the judgment creditor and included in the notice of sale, the sheriff may accept payment by cashier's check, money order, or other method.” (Rule 76.18)
- 15. Examination of Judgment Debtor (Rule 76.27)
 - a. Available if an execution (including garnishment in aid of execution) is returned unsatisfied
 - b. Fifth Amendment problem

- c. Section 513.380 allows a prosecuting attorney to grant use immunity. "Such use immunity from prosecution shall protect such person from prosecution for any offense related to the content of the statements made."
- d. Some judges will require grant of federal immunity as well (not gonna happen).
- e. *State ex rel. Nothum v. Walsh*, 380 S.W.3d 557 (Mo. Banc 2012) effectively rendered debtors' exams almost useless. ("The grant of this limited form of immunity was insufficient to supplant [debtors'] invocation of their right against self-incrimination ...")
- f. Almost: Failure to appear for a debtor's exam will submit a debtor to a writ of body attachment

16. Discovery in aid of execution (Rule 76.28)

17. Motion to quash

- a. Use to defend a writ of execution or garnishment
- b. Cannot be used to relitigate underlying judgment. *McConnell v. St. Louis County*, 655 S.W.2d 654 (Mo.App.E.D. 1983).
- c. Can be used to attack a facially void judgment, or a judgment that has been satisfied or partially satisfied. *Reis v. La Preso*, 324 S.W.2d 648 (Mo. 1959).

18. **Forms:** Use OSCA forms at home page / quick links to forms / Civil Forms

Execution Application and Order

<https://www.courts.mo.gov/file.jsp?id=104655>



Enforcement QDROs

1. ERISA assets are not subject to traditional garnishments or executions

28 U.S.C. §§ 1001-1461

- **Defined benefit** retirement plan
 - Funded by employer
 - Specific monthly benefit at retirement
 - Pensions
 - Annuities
- **Defined contribution** plan
 - Funded by employee and usually by employer
 - Benefits depend on investment by employee
 - 401(k) plans
 - Profit sharing plans
 - ESOP (employee stock ownership plan)
 - SEP (simplified employee retirement plan – e.g. contribute to IRA)
 - Note: Individual IRAs and Roth IRAs are typically *not* ERISA assets and are subject to seizure without an enforcement QDRO
 - Money purchase pension plan
 - Thrift or savings plan
- Non-qualified plans
 - Do not meet ERISA requirements
 - Lack tax benefits, so not popular with employers
 - 457 plans
 - Not protected from creditors

2. ERISA assets subject to QDRO for enforcement
 - a. ERISA spendthrift provision **29 U.S.C. § 1056(d)(1)**
 - b. Since enactment in 1974, federal courts split on whether ERISA assets could be alienated for domestic support orders
 - c. Retirement Equity Act, 1984, amended ERISA to allow alienation, but only through a QDRO **29 U.S.C. § 1056(d)(3)(A)**
 - d. QDRO:
 - i. Domestic relations order for:
 1. child support
 2. maintenance
 3. marital property**29 U.S.C.A. § 1056(d)(3)(B)(ii)**
3. Missouri authority for Enforcement QDROs
 - a. ***Baird v. Baird***, 843 S.W.2d 388 (Mo.App.E.D. 1992)
 - b. First Missouri case establishing ability to use a QDRO to seize ERISA assets to enforce an arrearage for child support or maintenance¹
 - c. “ERISA permits QDRO’s to be used to enforce an earlier entered support judgment and collect delinquent maintenance and child support payments against a pension fund.” *Id.* at 392 [7-9]
4. The *Baird* Enforcement QDRO

¹ *Baird* was also the first Missouri case to explicitly hold that the provision for interest on delinquent support, found in Section 454.520 RSMo, was *mandatory*. 843 S.W.2d at 390.

CIRCUIT COURT OF AUDRAIN COUNTY
STATE OF MISSOURI

JD Baird,

Petitioner,

Vs.

Case No. 15,562

HL Baird,

Respondent.

Qualified Domestic Relations Order

IT APPEARING TO THE COURT that:

1. Respondent, HL Baird, was ordered by this court to pay to Petitioner, JD Baird, child support and maintenance by virtue of the 1979 Decree herein, as modified by the 1980 order of modification; and
2. On May 23, 1984, Respondent was found to be in arrears for child support and maintenance in the sum of \$17,456.86; and
3. The circuit clerk of Audrain County has been, and continues to be, the trustee for receipt and disbursement of child support and maintenance payments for Petitioner; and²
4. Petitioner, pursuant to the Affidavit in Support of Q.D.R.O., and after further hearing before the court, and argument by the parties, seeks enforcement of this arrearage, with interest, in the total sum of \$22,921.27 at this time. (\$11,234.91 principal + \$11,686.36 interest on arrears from May 1984); and
5. Petitioner desires to enforce this judgment against Respondent's interest in a pension plan, which is subject to alienation for enforcement of a child support or maintenance obligation only through a "Qualified Domestic Relations Order."

AND, THE FOLLOWING INFORMATION BEING SET FORTH:

² Circuit clerks no longer serve as child support payment trustees. This paragraph could be changed to reflect the Family Support Payment Center trustee. For example: "The Family Support Payment Center is the trustee for the receipt and disbursement of child support payments." Or the paragraph could simply be eliminated.

1. Respondent is a participant in the Local No. 1, IBEW, Pension Benefit Trust Fund. This is a Defined Contribution type pension plan subject to the Employees Retirement Income Security Act of 1974 (ERISA). This is also a profit-sharing plan, subject to adjustment upward or downward. The name and address of the plan administrator is: Mr. Floyd L. Davis, Administrative Manager, Local No. 1, IBEW, Pension Benefit Trust Fund, 3260 Hampton Avenue, P.O. Box 6088, St. Louis, MO 63139 (573-752-2330).
2. Petitioner's address is: _____, Fulton, MO 65251. Petitioner's Social Security Number is: _____.³ Petitioner's date of birth is: _____.
3. Respondent's address is: _____, Wright City, MO 63390. Respondent's Social Security Number is: _____. Respondent's date of birth is: _____.
4. Information concerning the plan and this Order, and disbursements from the plan pursuant hereto, should be made through Petitioner's attorney, Daniel J. Pingelton, 28 North 8th Street, Suite 402, Columbia, MO 65201. (573-449-5091) Disbursements should be made payable to: "JD Baird."⁴

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. As and for enforcement of a child support and maintenance arrearage herein, Petitioner JD Baird, is awarded the sum of \$22,921.27 from Respondent's interest in the Local No. 1 IBEW Pension Benefit Trust Fund.
2. Petitioner, JD Baird, shall make application for payment from the plan in a lump-sum distribution form. Petitioner, JD Baird, shall, if requested by the

³ A QDRO does not require a social security number. Current Missouri procedure directs that full Social Security Numbers not be disclosed in judgments. However, QDRO plan administrators are accustomed to checking names with identifying information such as SSNs. Counsel may wish to use only the last four digits, but then send a separate, non-filed letter to the plan administrator disclosing the debtor's full SSN.

⁴ Some plan administrators would not honor this disbursement directive: "JD Baird and Daniel J. Pingelton, her attorney," because this appears contrary to the payee provisions required by the ERISA.

plan administrator, execute a waiver of withholding or other documents related to the plan's tax liability.

3. As Respondent, HL Baird, is over 50 years of age, this sum is payable in full to Petitioner immediately.
4. Payment shall be mailed to Petitioner's attorney, Daniel J. Pingelton, 28 North 8th Street, Suite 402, Columbia, MO 65201. (573-449-5091). Payment shall be made payable to: "JD Baird."

SO ORDERED this _____ day of January 1992.

EDWARD D. HODGE
Circuit Judge

5. Another example, from Pension Benefit Guaranty Corporation

The Pension Benefit Guaranty Corporation (PBGC) is a federal agency, created by ERISA, to protect pension benefits in private-sector defined benefit plans. When a private plan terminates without sufficient money to pay all benefits, PBGC's insurance program pay benefit up to limits designed by law. (Most people will receive full benefits.)

<http://www.pbgc.gov/home.html>

This form may be used when a defined benefit pension plan has terminated, PBGC has become trustee of the plan, and PBGC is to pay a portion of the participant's monthly benefit payments as child support. If the participant's benefit payments have not started, you may submit a shared payment or a separate interest child support order to PBGC. After a participant's benefits have started, only a shared payment order may be submitted.

NOTE: Child support payments under a shared payment order cannot start until the participant's benefit payments have started.

In the Circuit Court of _____
State of Missouri

In re:

Petitioner,

Vs.

Case No.

Respondent.

QUALIFIED DOMESTIC RELATIONS ORDER

This Order is intended to be a qualified domestic relations order ("QDRO"), as that term is defined in section 206(d) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and section 414(p) of the Internal Revenue Code of 1986, as amended ("Code"). This Order is granted in accordance with Missouri law which relates to the use of QDROs to collect delinquent child support and maintenance.

SECTION 1. IDENTIFICATION OF PLAN

This Order applies to benefits under the **[formal name of plan]** ("Plan"). The Pension Benefit Guaranty Corporation ("PBGC") is trustee of the Plan.

SECTION 2. IDENTIFICATION OF PARTICIPANT AND ALTERNATE PAYEE(S)

a. **[Name of the Participant]** is eligible to receive a benefit from the Plan and is hereafter referred to as the "Participant." The Participant's mailing address is **[address]**. The Participant's Social Security Number is **[Social Security Number]**.

b. **[Name of the Alternate Payee]** is hereafter referred to as the "Alternate Payee." The Alternate Payee's mailing address is **[address]**. The Alternate Payee's Social Security Number is **[Social Security Number]**. The Alternate Payee is the child or other dependent of the Participant.

[If the alternate payee has a guardian, add:]

The Alternate Payee's legal guardian is **[name of guardian]**,

whose mailing address is **[address]**.

[If the payments are required to be sent to a state agency, add:]

Payments under this Order are to be mailed to **Missouri Department of Social Services, Family Support Division, 615 Howerton Court, Jefferson City, MO 65201-2320.**

Questions concerning these payments should be addressed to **[counsel's name and contact information]**

SECTION 3. AMOUNT OF BENEFIT TO BE PAID TO ALTERNATE PAYEE

a. Starting at the time specified in section 5, PBGC shall pay to the Alternate Payee [**\$x/x%**] of each of the Participant's monthly benefit payments.⁵

b. **OPTIONAL:** When [**insert future event**] occurs and PBGC is notified in writing, PBGC shall [**increase/decrease**] the amount paid to the Alternate Payee from each of the Participant's monthly benefit payments to [**\$x/x%**].

SECTION 4. PBGC BENEFIT ADJUSTMENTS

If PBGC adjusts the Participant's benefit, any reduction shall be applied by decreasing [**pro rata the Participant's and the Alternate Payee's benefits/the Participant's benefit first/the Alternate Payee's benefit first**], and any increase shall be applied by increasing [**pro rata the Participant's and the Alternate Payee's benefits/the Participant's benefit/the Alternate Payee's benefit**].

SECTION 5. BENEFITS START

Payments to the Alternate Payee shall be payable as of [**such future date as the Alternate Payee elects/a future specified date/the date when PBGC starts payments to the Participant**]. (This date must be the first day of a month and cannot be before the Participant's "earliest PBGC retirement date," which is defined in 29 C.F.R. §4022.10.) Payment shall not be made until PBGC qualifies this domestic relations order and receives a PBGC benefit application from the Alternate Payee. Payments to the Alternate Payee shall not start earlier than the date the Participant starts payments.

SECTION 6. FORM OF BENEFIT

The Alternate Payee shall not have the right to elect a form of benefit. The amount paid to the Alternate Payee will be determined by the benefit form elected by the Participant.

SECTION 7. BENEFITS STOP

PBGC shall make payments to the Alternate Payee until the [**earlier of the Participant's or Alternate Payee's death/earlier of: the Participant's or Alternate Payee's death, a specific date, or the date PBGC is notified of the occurrence of [insert specific event]**].

SECTION 8. DEATH OF PARTICIPANT

If the Participant dies before the Alternate Payee, the Alternate Payee is not entitled to any payments as of the first of the month following the Participant's death.

SECTION 9. DEATH OF ALTERNATE PAYEE

If the Alternate Payee dies before the Participant, PBGC shall return the Participant's monthly benefit payments to the amount that the Participant would be receiving had there been no Order.

SECTION 10. OTHER REQUIREMENTS

⁵ For monthly enforcement, consider the use of the 50-55-60-65 percent maximum allowed under federal law for enforcement of support arrearages: "Starting at the time specified in section 5, PBGC shall pay to the Alternate Payee 65% of each of the Participant's monthly benefit payments."

Nothing in this Order shall require PBGC:

1. To pay any benefits not permitted under ERISA or the Code;
2. To provide any type or form of benefit or any option not paid by PBGC with respect to the Plan;
3. To pay benefits to the Participant and Alternate Payee with a total value that exceeds the value of the benefits the Participant otherwise would receive under Title IV of ERISA;
4. To pay benefits to the Alternate Payee that are required to be paid to another alternate payee under another QDRO that is in effect prior to this Order;
5. To pay benefits to the Alternate Payee for any period before PBGC receives this Order; or
6. To change the benefit form if the Participant is already receiving benefit payments.

SECTION 11. RESERVATION OF JURISDICTION

The Court reserves jurisdiction to amend this Order to establish or maintain its status as a QDRO under ERISA and the Code.

IT IS SO ORDERED:

Date: _____

JUDGE

6. Applying for an enforcement QDRO

CIRCUIT COURT OF AUDRAIN COUNTY
STATE OF MISSOURI

filed
CLIENT'S COPY

BAIRD,)
Petitioner,)
vs.) Case No. 15,562
BAIRD,)
Respondent.)

AFFIDAVIT in support of Q.D.R.O.

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

I, Baird, being duly sworn upon my oath,
state the following:

1. I am the Petitioner in the above-captioned cause.
2. The Circuit Clerk of Audrain County, Missouri, has been serving as trustee for receipt and disbursement of child support and maintenance payments from Respondent, herein.
3. As of October 3, 1991, Respondent's child support and maintenance arrearage herein is \$14,950.91, after credit for the most recent garnishment receipt with deduction for the costs thereof.
4. On May 23, 1984, Respondent's child support and maintenance arrearage was found by the Court to be \$17,456.86.
5. At this time, I am not seeking interest on the child support and maintenance arrearages prior to May, 1984. By not seeking this interest at this time, I do NOT intend to waive my claim to interest during this time period.
6. I am seeking interest on the child support and maintenance arrearages subsequent to May, 1984. Pursuant to Section 454.520 RSMo 1986,

interest on these arrearages from May, 1984, through October, 1991, is \$13,141.64.

7. Therefore, I am seeking enforcement for a total sum of \$28,092.85 at this time. (\$14,950.91 principal + \$13,141.94 interest on arrears from May, 1984)

8. To enforce this obligation, I require a "Qualified Domestic Relations Order" from this Court. Respondent is a participant in the Local No. 1, IBEW, Pension Benefit Trust Fund. This is a Defined Contribution type pension plan subject to the Employees Retirement Income Security Act of 1974 (ERISA). The name and address of the plan administrator is: Mr. Floyd L. Davis, Administrative Manager, Local No. 1, IBEW, Pension Benefit Trust Fund, 3260 Hampton Avenue, P.O. Box 6088, St. Louis, MO 63139 (tel. 752-2330).

9. My address is: _____ Fulton, MO 65251. My Social Security number _____ . My date of birth is: _____ Respondent's address is: _____ Wright City, MO 63390. Respondent's Social Security Number is: _____ . Respondent's date of birth is: _____

10. My attorney is: Daniel J. Pingelton, Attorney at Law, Suite 216, 1001 Cherry Street, Columbia, MO 65201 (tel. 449-5091).

res Baird
BAIRD

Subscribed and sworn to before me this 3rd day of October, 1991.

Dan J. Pingelton
Notary Public

DAN J. PINGELTON, NOTARY PUBLIC
BOONE COUNTY, STATE OF MISSOURI
MY COMMISSION EXPIRES 11/15/93

7. Interest affidavit

STATE OF MISSOURI)
COUNTY OF BOONE) ss.

Circuit Court of Boone County, Missouri

OBLIGEE,)
PETITIONER,)
Cause No.)
v.)
Division VII)
OBLIGOR,)
RESPONDENT.)

AFFIDAVIT OF PAYMENT HISTORY AND INTEREST COMPUTATION

Comes now Petitioner, and for Petitioner's Affidavit of Payment History and Interest Computation submits this sworn affidavit setting forth the payment history of the obligor herein with regard to support/maintenance, and further setting forth a statement which details the computation of the interest claimed to be due and owing thereon, all as required by §454.520.5, R.S.Mo.

OBLIGOR'S PAYMENT HISTORY

<u>DATE OF PAYMENT</u>	<u>PAYMENT AMOUNT</u>
11/02/2011	\$ 262.50
11/14/2011	\$ 267.50
12/12/2011	\$ 97.50
04/01/2012	\$ 35.00
05/09/2012	\$ 77.50

05/25/2012	\$	176.50
06/01/2012	\$	100.00
11/14/2012	\$	100.00

TOTAL PAID AS OF 12/03/2012: \$1,116.50

DATE OF TRANSACTION	TRANSACTION TYPE	TRANSACTION AMOUNT	TOTAL AMOUNT DUE	TOTAL PRINCIPAL DUE	TOTAL INTEREST DUE
09/01/2008	Installment	\$ 607.00	\$ 607.00	\$ 607.00	\$ 0.00
09/30/2008	Interest Due	\$ 0.00	\$ 607.00	\$ 607.00	\$ 0.00
10/01/2008	Installment	\$ 607.00	\$ 1,214.00	\$ 1,214.00	\$ 0.00
10/31/2008	Interest Due	\$ 6.07	\$ 1,220.07	\$ 1,214.00	\$ 6.07
11/01/2008	Installment	\$ 607.00	\$ 1,827.07	\$ 1,821.00	\$ 6.07
11/30/2008	Interest Due	\$ 12.14	\$ 1,839.21	\$ 1,821.00	\$ 18.21
12/01/2008	Installment	\$ 607.00	\$ 2,446.21	\$ 2,428.00	\$ 18.21
12/31/2008	Interest Due	\$ 18.21	\$ 2,464.42	\$ 2,428.00	\$ 36.42
01/01/2009	Installment	\$ 607.00	\$ 3,071.42	\$ 3,035.00	\$ 36.42
01/31/2009	Interest Due	\$ 24.28	\$ 3,095.70	\$ 3,035.00	\$ 60.70
02/01/2009	Installment	\$ 607.00	\$ 3,702.70	\$ 3,642.00	\$ 60.70
02/28/2009	Interest Due	\$ 30.35	\$ 3,733.05	\$ 3,642.00	\$ 91.05
03/01/2009	Installment	\$ 607.00	\$ 4,340.05	\$ 4,249.00	\$ 91.05
03/31/2009	Interest Due	\$ 36.42	\$ 4,376.47	\$ 4,249.00	\$ 127.47
04/01/2009	Installment	\$ 607.00	\$ 4,983.47	\$ 4,856.00	\$ 127.47
04/30/2009	Interest Due	\$ 42.49	\$ 5,025.96	\$ 4,856.00	\$ 169.96
05/01/2009	Installment	\$ 607.00	\$ 5,632.96	\$ 5,463.00	\$ 169.96
05/31/2009	Interest Due	\$ 48.56	\$ 5,681.52	\$ 5,463.00	\$ 218.52
06/01/2009	Installment	\$ 607.00	\$ 6,288.52	\$ 6,070.00	\$ 218.52
06/30/2009	Interest Due	\$ 54.63	\$ 6,343.15	\$ 6,070.00	\$ 273.15
07/01/2009	Installment	\$ 607.00	\$ 6,950.15	\$ 6,677.00	\$ 273.15
07/31/2009	Interest Due	\$ 60.70	\$ 7,010.85	\$ 6,677.00	\$ 333.85
08/01/2009	Installment	\$ 607.00	\$ 7,617.85	\$ 7,284.00	\$ 333.85
08/31/2009	Interest Due	\$ 66.77	\$ 7,684.62	\$ 7,284.00	\$ 400.62
09/01/2009	Installment	\$ 607.00	\$ 8,291.62	\$ 7,891.00	\$ 400.62

• • •

Owed as of 12/03/2012

Principal: \$ 30,447.50

Interest : \$ 7,631.13

TOTAL : \$ 38,078.63

FURTHER AFFIANT SAYETH NOT.

DATE OBLIGOR, PETITIONER

STATE OF MISSOURI)

COUNTY OF _____) ss.

On this _____ day of _____, 20____ appeared before me OBLIGOR, of lawful age, who is the Petitioner herein, and who made oath that the above and foregoing Affidavit of Payment History and Interest Computation is true.

DATE NOTARY PUBLIC

My commission expires: _____



Charging Orders

1. Creditors of one partner cannot reach partnership property
 - a. Protects other partners against disruption of partnership business
 - b. But, debtor-partner's intangible interest in partnership is subject to collection
2. Section 454.528 RSMo (special support joint property seizure) cannot be used against partnership interests. *Willis v. Willis*, 750 S.W.2d 567 (Mo.App.E.D. 1988).

In *Willis*, the old Child Support Enforcement Unit (CSEU) garnished a bank account of two men supposedly owning the Rainbow Lodge. CSEU voluntarily released half of the funds, apparently recognizing the interest of one of the "partners."

The court discussed the reach of the Child Support Enforcement Act of 1986 and the provisions of Missouri's Uniform Partnership Law. Addressing the overriding exemption statute (Section 452.140 RSMo), the court concluded that its purpose was "not designed to apply to specific business related statutes such as the Uniform Partnership Law."

When a creditor obtained a judgment against the partner and he wanted to obtain the benefit of that judgment against the share of that partner in the firm, the first thing was to issue a fi. fa.¹, and the sheriff went down to the partnership place of business, seized everything, stopped the business, drove the solvent partners wild, and caused the execution creditor to bring an action in Chancery in order to get an injunction to take an account and pay on that which was due by the execution debtor. A more clumsy method of providing could hardly have grown up.

Lord Justice Lindley, in *Brown, Janson & Co. v. Hutchinson & Co.*, 1 Q.B. 737 (1895)

3. A "charging order" is the **exclusive remedy** for a partner's individual creditor, including support creditors. *Willis, Id.*
4. The court in *Willis* remanded for the trial court to received additional evidence as to whether this was a true partnership. If so, the creditor would be allowed to request a charging order; and if not, the garnishment quashing would be overruled and the funds release to the creditor.

¹ *Fieri facias* is a writ of execution, issued in Her Majesty's High Court of Justice in England. It was renamed a "writ of control" in 2014.

5. Partnerships: Section 358.280 RSMo:

1. On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

2. The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution

(1) With separate property, by any one or more of the partners; or

(2) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

3. Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

- a. Note that Section 358.280.2 expressly authorizes a foreclosure and court-ordered sale of charge partnership interests in a general partnership. *Disalvo Properties, LLC v. Bluff View Commercial, LLC*, 464 S.W.3d 243, 248 (Mo.App.E.D. 2015).

6. Limited Partnerships: Section 359.421 RSMo:

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

- a. Although not expressly authorized, Missouri's Uniform Limited Partnership Law "implicitly authorizes a foreclosure and court-ordered sale of charged partnership interests in a limited

partnership.” *Disalvo Properties, LLC v. Bluff View Commercial, LLC*, 464 S.W.3d 243, 248 (Mo.App.E.D. 2015).

7. Limited Liability Companies: Section 347.119 RSMo

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's interest in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's interest. Sections 347.010 to 347.187 do not deprive any member of the benefit of any exemption laws applicable to his interest in the limited liability company.

- a. Unlike partnerships and limited partnerships, Missouri statutes do not explicitly or implicitly authorize a foreclosure or court-ordered sale of charged membership interests in an LLC. *Disalvo Properties, LLC v. Bluff View Commercial, LLC*, 464 S.W.3d 243, 248 (Mo.App.E.D. 2015).

8. Form: Motion for Charging Order

[Caption]

MOTION FOR CHARGING ORDER

Petitioner, Obligee, pursuant to Section 358.280 RSMo, moves the court for a charging order against the interest of Respondent Obligee, on the following grounds:

1. On [date of entry], Petitioner obtained a judgment in this court awarding her child support in the sum of \$450 per month.
2. Respondent Obligee failed to pay child support as ordered. Pursuant to the Affidavit filed by Petitioner herein, Respondent currently owes past-due child support in the sum of \$4050.00 principal and \$3410.56 statutory interest.

3. Petitioner believes Respondent owns a partnership interest in a company known as APF Company. This company's address is: 123 Child Support Lane, Columbia, MO 65201. The following persons are partners in APF Company:

Obligor Friend, address:

Obligor Cousin, address:

Obligor Brother, address:

Obligor Girlfriend, address:

Obligor ex-Girlfriend, address:

4. Petitioner is entitled as a child support judgment creditor to a charging order against the nonexempt interest of Respondent in the partnership.

THEREFORE, Petitioner requests:

1. That this court enter a charging order against the interest of Respondent, in partnership with the above-named partners, and any other interest in the partnership which Respondent owns, directing said partners to report to the court the amount which is now due or may become due or distributable to Respondent by reason of any such interest in the partnership and any other interest in the partnership which Respondent owns.

(b) That this court appoint a receiver to hold and take charge of the property encumbered by the charging order, and that the receiver be empowered by the court to foreclose the Petitioner's lien and to sell the encumbered property.

[OR:]

THEREFORE, Petitioner requests:

1. That Respondent be directed to appear before this court to show cause why an order should not be entered directing the payment to

Petitioner of such amounts as may become distributable to Respondent from time to time by reason of Respondent's interest in the partnership and any other interest in the partnership that Respondent owns; and that the court order that at such hearing a copy of the articles of partnership and any other agreement controlling the interests of Respondent be produced in court by Respondent, together with true evidence of the value of the capital and income accounts attributable to the interest of Respondent in the partnership, and any other interest in the partnership which Respondent owns; and Petitioner further requests that the court enter all orders necessary for the protection of Petitioner's right to recover on the judgment against Respondent.

Attorney for Petitioner



Joint Bank Accounts

1. Section 454.507 RSMo
 - a. FSD records request and lien
 - b. Appears limited to the FSD
 - c. Section 454.507.6:
 6. (1) If a notice of lien is received from the division or a IV-D agency, the financial institution shall immediately encumber the assets held by such institution on behalf of any noncustodial parent who is subject to such lien. **However, if the account is in the name of a noncustodial parent and such parent's spouse or parent, the financial institution at its discretion may not encumber the assets and when it elects not to encumber such assets, shall so notify the division or IV-D agency.** The amount of assets to be encumbered shall be stated in the notice and shall not exceed the amount of unpaid support due at the time of issuance. The financial institution shall, within ten business days of receipt of a notice of lien, notify the division or IV-D agency of the financial institution's response to the notice of lien.
 - d. For all other jointly held accounts, the interest of each holder is presumed equal
 - i. Non-obligor account holder may rebut 50% presumption by providing FSD was proof of a different ownership interest within 20 days after notification of lien by bank
 - e. FSD limited to 50% of account balance, regardless of actual ownership interest
 - i. Traditional levy and execution required to exceed 50% presumption
 - f. Financial institutions may be liable for failing to honor a lien without "due cause" which is defined broadly in favor of banks in Section 454.507.13: "accidental error, a misplaced computer entry, or other accidental human or mechanical problems." So generally, no liability unless the lien is intentionally ignored.
 - g. And financial institutions are absolved from all liability to any person for honoring the lien, Section 454.507.12. That would include honoring the lien by voluntarily encumbering even entireties property pursuant to Section 454.507.6: "However, if the account is in the name of a noncustodial parent and such parent's spouse or parent, the financial institution at its discretion may not encumber the assets and

when it elects not to encumber such assets, shall so notify the division or IV-D agency.”

2. Section 454.528 RSMo

- a. Allows seizure of all jointly held property *except* a tenancy by the entirety
- b. Available to any support creditor
- c. Interests of account holders presumed equal
 - i. Account holder may rebut presumption by submitting proof within 10 days after return date of execution
 - ii. Either party or any account holder may petition court to determine interest
 - iii. Party seeking to rebut 50% interest, either way, has burden of proof
- d. Banks may use interpleader
- e. Attorney fees may be assessed against obligor if s/he has an interest
- f. Attorney fees may be assessed against person requesting execution if obligor has no interest in account
- g. Option to present proof of different interests to rebut presumption OR request a hearing
- h. Give all notices required for traditional levy and execution. *See McDonald v. McDonald*, 766 S.W.2d 715 (Mo.App.E.D. 1989)
- i. **Entireties Property.** *Gaunt v. Shelter Mut. Ins. Co. and DCSE*, 808 S.W.2d 401 (Mo.App.S.D. 1991):

The Gaunts had a house fire in 1985 and sued Shelter Insurance to recover on their insurance policy. DCSE was enforcing a support obligation against Mrs. Gaunt, and in 1989 filed a lien on the lawsuit, pursuant to Section 454.518. (See *Super Liens*, below) In 1990, DCSE intervened in the Gaunt’s claim against Shelter.

The Gaunts and Shelter engaged in settlement negotiations and on June 21, 1990, Shelter filed to enforce a settlement agreement for \$9500. Immediately thereafter, Shelter received notice of DCSE’s lien, as well as a standard order to withhold (OTW). Shelter then dutifully issued two settlement checks: one for \$3900 payable to the Gaunts, their attorney, and the circuit clerk “in recognition of the lien imposed and court order”; and one for \$5600 payable to the Gaunts and their attorney. Shelter sought an order enforcing the settlement agreement.

Following DCSE's intervention, the court directed the clerk to endorse the \$3900 check and deliver it to the Gaunts and their attorney, effectively vitiating the lien.

DCSE appealed, arguing that because the check was payable to others besides the Gaunts as husband and wife, it was not entirety property. The Division noted the explicit language of Section 454.528.1:

“The interest of one or more owners of any real or personal property held in joint tenancy with right of survivorship, or otherwise held in any form of joint interest, *except for property held in the name of a husband and wife and no other*, are subject to execution as provided in this section for the sole purpose of enforcing judgments or orders for child support or maintenance.” (Emphasis added.)

It was a good argument, from a technical standpoint. But in rejecting it, the court noted that even DCSE acknowledged that the property damaged by the fire was owned by the Gaunts as tenants by the entirety. And had Shelter just paid the claim, the check would have been payable only to them, and no other.

The court recited some cardinal rules protecting the sanctity of the marital bounty:

- “So long as the spouses remain married, a tenancy by the entirety may be terminated or severed only by joint and mutual action on the part of husband and wife.”
- In the absence of evidence indicating a contrary intention by both parties, a tenancy by the entirety will be presumed to follow the proceeds of the sale of entirety property.
- Neither spouse may dispose of an interest in the estate by the entirety without the assent of the other.
- A judgment against just one spouse does constitute a lien on the property since neither has a separate interest subject to execution.

Gaunt also confirms that including an attorney's name on a settlement check does not subject it to a lien on that basis alone. The court explained that adding a party's attorney as payee in the capacity as attorney (“... and Bob Moss, his attorney”) allows counsel to enforce his own attorney's lien on the client's claim. An attorney's lien, like other liens, “is not a property in or right to the thing itself, but constitutes a charge or security thereon.”

- j. **Entireties Property.** *Wry v. Wade*, 814 S.W.2d 655 (Mo.App.W.D. 1991):

The obligor and his current wife settled their lawsuit for personal injuries to the obligor. (Although not reported, the current wife presumably had filed a claim for loss of consortium.) The court rejected the couple's claim that all settlement proceeds were unreachable as a tenancy by the entirety. The court explained that the husband and wife "each settled their claim for their individual damages" from injuries to the husband/obligor. Because the proceeds had not yet been paid to the couple, joint ownership had not yet been created. The court remanded for a determination of the proceeds that were due the obligor, all of which would then be subject to execution for the child support and maintenance owed to the obligor's first wife.

3. Is a joint bank account in the name of husband and wife simply untouchable?
Not necessarily! Do not give up. Consider an action for fraudulent conveyance.



Fraudulent Conveyances

First, a bit of history.

Near the beginning of the 17th Century in England, Mr. Pierce owed four hundred pounds to his acquaintance, Twyne. He also owed £200 to another creditor. To prevent that other creditor from collecting, Pierce purported to give Twyne all of his sheep to satisfy his £400 debt. But the sheep stayed on Pierce's property, marked with Pierce's own brand; he even sold some of them.

The other creditor then sent the Sheriff of Southampton to seize Pierce's property. But Twyne and his own men resisted the sheriff, claiming that the sheep belonged to him and not Pierce.

The other creditor then sued Pierce, and because Twyne's resistance of the sheriff was considered an offense against the Crown, the matter would up in the Star Chamber. And thus begat the phrase "badges of fraud" to determine whether a transfer of property was legitimate or done to avoid creditors. The court in *Twyne's Case*, Star Chamber, 1601, 3 Coke, 80b, 76 Eng.Rep. 809 described six factors that would come to be called "badges of fraud":

1. Complete transfer of all property, exceeding property sufficient to satisfy a debt. ("*quod dolus versatur in generalibus*" – "A deceiver deals in generals")
2. After transfer to Twyne, Pierce continued to possess and use the sheep as his own, even shearing and selling the wool.
3. The deal was done secretly between Pierce and Twyne. ("*et dona clandestine sunt sumper suspiciosa*" – "Clandestine gifts are always suspicious.")

4. Pierce transferred the sheep to Twyne after the other creditor sought a writ from the sheriff to seize them.

5. Pierce and Twyne had a private agreement that Twyne would hold the sheep in "trust," and not as an actual payment.

6. The deed of sheep from Pierce to Twyne recited that the transfer "was made honestly, truly, and *bona fide*." ("*et clausulae inconsuet' semper inducant suspicionem*" – "unusual clauses always excite suspicion")

The Star Chamber concluded: "And by the judgment of the whole Court Twyne was convicted of fraud, and he and all the others of a riot."



Through the years and revolutions since 1601, courts and legislatures have further defined "badges of fraud" to set aside fraudulent conveyances. In 1992, Missouri adopted the Uniform Fraudulent Transfer Act (UFTA), Sections 428.005 – 428.059.

1. The Missouri Uniform Fraudulent Transfer Act

- a. Sections 428-005 – 428.059 RSMo
- b. “Asset” does *not* include property encumbered by valid lien (*e.g.* support lien)
- c. “Asset” does *not* include tenancy by the entireties where creditor holds claim against only one tenant

See *Konopasek*, below
- d. “Insider” includes:
 - i. relative: 3rd degree on consanguinity; spouse; individual related to spouse within 3rd degree of consanguinity; consanguinity includes adoptive relationships
 - ii. partnership where debtor is general partner
 - iii. corporation in which debtor is director, officer or person in control
- e. Differentiates between obligations existing prior to from obligations incurred after a transfer
- f. **Present creditors:** Use 428.029 (easier to prove) or 428.024

428.029. Transfers fraudulent as to present creditors

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

2. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

- g. **Future creditors:** Must use 428.024 (a bit harder to prove for a party becoming a creditor *after* an allegedly fraudulent transaction)

428.024. Transfers fraudulent as to present and future creditors

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (a) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (b) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

2. In determining actual intent under subdivision (1) of subsection 1 of this section, consideration may be given, among other factors, to whether:

- (1) The transfer or obligation was to an insider;
- (2) The debtor retained possession or control of the property transferred after the transfer;
- (3) The transfer or obligation was disclosed or concealed;
- (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) The transfer was of substantially all the debtor's assets;
- (6) The debtor absconded;
- (7) The debtor removed or concealed assets;
- (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

h. **Remedies:** Section 428.030 RSMo:

1. In an action for relief against a transfer or obligation under sections 428.005 to 428.059, a creditor, subject to the limitations in section 428.044¹, may obtain:

- (1) **Avoidance of the transfer** or obligation to the extent necessary to satisfy the creditor's claim;
 - (2) An **attachment or other provisional remedy** against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable laws of this state;
 - (3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,
 - (a) An **injunction** against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - (b) **Appointment of a receiver** to take charge of the asset transferred or of other property of the transferee; or
 - (c) Any other relief the circumstances may require.
2. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may **levy execution on the asset transferred or its proceeds**.

i. **Statute of Limitations** (Section 428.040)

A claim for relief or cause of action with respect to a fraudulent transfer or obligation under sections 428.005 to 428.059 is extinguished unless action is brought:

- (1) Under subdivision (1) of subsection 1 of section 428.024, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (2) Under subdivision (2) of subsection 1 of section 428.024 or subsection 1 of section 428.029, within four years after the transfer was made or the obligation was incurred; or
- (3) Under subsection 2 of section 428.029, within one year after the transfer was made or the obligation was incurred

¹ Section 428.044 sets forth defenses and protections of the transferee.

- j. ***Konopasek v. Konopasek***, 2023 WL 4201660 (Mo. 2023) is a brand-new Missouri Supreme Court case holding that any single “badge of fraud” will support a UFTA remedy. It’s notable in the IV-D world because the creditor was owed child support and collected it from a joint account held by husband and wife in a tenancy by the entireties. She did so because the court found that a deposit into the account was a fraudulent conveyance.

In 2013 the first of two child support judgments was entered against debtor. In 2015 he suffered injuries in a work-related automobile crash. In 2016 he remarried his previous wife (not the support creditor). In May 2018 debtor’s workers’ compensation was settled for more than \$49,000 and the proceeds deposited into his joint account with his wife. In June 2018 he settled his personal injury claim for more than \$235,000 and likewise deposited that into the marital account. In 2020 the second support judgment was entered against debtor. In 2021, the support creditor filed a petition against debtor and his wife seeking to void the transfers debtor made into the joint account.

Debtor (and his wife) argued that there was no UFTA “transfer” of the proceeds because debtor retained control (along with his wife) after the deposits into their joint account. Rejecting this, the court explained that a debtor’s continued physical possession or control of assets does not determine whether a transfer occurred.² Thus: “While [debtor] may not have disposed of or parted with his control over the funds, he did dispose of or part with his individual *interest* in those funds so that the funds are no longer subject to legal process by [creditor], who is a judgment creditor of only [debtor, and not his spouse].”

Debtor also complained that creditor failed to specifically plead the circumstances constituting fraud. *See* Rule 55.15. The court rejected this, determining that reference to “... actual intent to hinder, delay and/or defraud [creditor] ...” was sufficient. Further, badges of fraud are only evidentiary facts, not required to be pled.³

The court held that to establish a fraudulent transfer, just one badge of fraud is sufficient, overruling earlier cases suggesting otherwise. Further, the court noted that the eleven statutory factors in the UFTA are not exclusive.

² Recall Pierce continuing to herd his sheep despite “transferring” them to Twyne.

³ “Missouri is a fact-pleading state.” “Under the fact-pleading standard, a petition must contain ‘a short and plain statement of the facts showing that the pleader is entitled to relief.’” “However, ‘[t]he facts that must be pleaded are the ultimate facts, not evidentiary facts.’” “Ultimate facts are those the jury must find to return a verdict for the plaintiff.” *Konopasek, slip op.* at 7.

“Badges of fraud are as infinite in number and form as are the resources and versatility of human artifice.” *Matz v. Miami Club Rest.*, 108 S.W.2d 975, 979 (Mo. App. 1937).

2. Section 454.525 ... conveyances of entirety, property set aside ...

- a. “UFTA for support debts”
- b.
 1. For purposes of this section, an “obligor” is a person who owes a duty of support as determined by a court or administrative agency of competent jurisdiction.
 2. Any conveyance of real or personal property made by the obligor, **including conveyances made by the obligor to himself and his spouse as tenants by the entirety**, for the purpose and with the **intent to delay, hinder or defraud** the person to whom the support obligation is owed shall be voidable, as long as the tenancy by the entirety exists and until a good faith purchaser for value gains title to the property. This subsection shall not operate to impair the commercial banks' defense under section 362.470.⁴
 3. Any party owed a support obligation may maintain an action for the purpose of setting aside a fraudulent conveyance by filing an appropriate motion in the cause of action that produced the support order, or if the order was established pursuant to sections 454.440 to 454.510, by filing a petition in the court in which the order was filed pursuant to section 454.490. Where the party seeking to set aside the conveyance presents evidence that the conveyance was made voluntarily and without adequate consideration or in anticipation of entry or enforcement of a judicial or administrative support order, a presumption shall arise that the conveyance was made with fraudulent intent. Upon such a showing, the burden of proving that the conveyance was made in good faith shall rest with the obligor.
 4. If after a hearing the court determines that the conveyance was made for the purpose and with the intent to delay, hinder or defraud the person to whom the support obligation is owed, the court shall set the conveyance aside and subject the property to execution for satisfaction of the support judgment subject to the interest of the good faith purchaser for value, mortgagee, or commercial bank.
- c. **Venue:** Creditor may file in cause of action that produced the support order. For administrative orders, file where order docketed.
- d. **Presumption:** “Where the party seeking to set aside the conveyance presents evidence that the conveyance was made voluntarily and without adequate

⁴ Section 362.470 deals with deposits into different kinds of bank accounts.

consideration or in anticipation of entry or enforcement of a judicial or administrative support order, a presumption shall arise that the conveyance was made with fraudulent intent.”

- e. **Shifts burden of proof:** “Upon such a showing, the burden of proving that the conveyance was made in good faith shall rest with the obligor.”
- f. **Remedy:** Conveyance set aside for execution subject to interests of a good faith purchaser for value, mortgagee, or commercial bank.
- g. **Statute of Limitations:**
 - i. Conveyance voidable “as long as the tenancy by the entirety exists and until a good faith purchaser for value gains title to the property.”
Section 454.525.2 RSMo
 - ii. *Jones v. Jones*, 497 S.W.3d 334, 342 (Mo.App.W.D. 2016) (“[A] fraudulent conveyance is voidable until a good faith purchaser for value retains title to the property.”)
- h. *Wallace v. Wallace*, 269 S.W.3d 469 (Mo.App.E.D. 2008)

Facts: During the pendency of a high-income motion to modify, husband transferred all of his property (from which he was deriving income) to his current wife. The trial court denied the support obligee’s motion to set aside fraudulent conveyances “for lack of jurisdiction over the subject matter.”

Holding: Reversed. Section 454.525.3 RSMo vests court with subject matter jurisdiction. (Following *Wyciskalla*⁵ this would be referred to simply as statutory authority to act.) The court rejected the obligor’s argument that he was current in his support obligation. The court noted that the statute required no showing of an arrearage as a condition precedent to setting aside a fraudulent conveyance:

Husband owed a support obligation to Wife from the moment the initial order and judgment requiring payment of child support was entered. Under that initial support order, Husband was required to pay, and Wife was entitled to demand, a specific payment every month. To say that a party “owed a support obligation” requires the existence of a delinquent or outstanding debt is not supported by the plain language of the statute. Moreover, such a reading would frustrate the purpose of the statute and lead to an unreasonable result. Under Husband’s logic, an obligor could prevent an estranged spouse from bringing any action to set aside fraudulent conveyances simply by keeping current on his or her child support obligations while continuing to make fraudulent conveyances “in

⁵ 275 S.W.3d 249 (Mo.banc 2009)

anticipation of entry or enforcement” of a future judicial support order. **The purpose of the statute is to prevent parents from transferring properties even “in anticipation” of an increased child support obligation.**

[emphasis added]



Lis Pendens

1. *Lis pendens* is a statutory remedy
2. Section 527.260 RSMo
In any civil action, based on any equitable right, claim or lien, affecting or designed to affect real estate, the plaintiff shall file for record, with the recorder of deeds of the county in which any such real estate is situated, a written notice of the pendency of the suit, stating the names of the parties, the style of the action and the term of the court to which such suit is brought, and a description of the real estate liable to be affected thereby; and the pendency of such suit shall be constructive notice to purchasers or encumbrancers, only from the time of filing such notice. The recorder shall note the time of receiving such notice, and shall record and index the same in like manner as deeds of real estate are required to be recorded and indexed.
3. Filing of *lis pendens* features absolute immunity provided the notice bears a reasonable relation to the action filed. *Lippman v. Bridgecrest Estates I Unit Owners Association*, 991 S.W.2d 145 (Mo.App.E.D. 1998)
4. Additional remedy beyond the special lien for child support: Section 454.515
5. Additional remedy beyond general judgment lien: Rule 74.05; Section 511.360
6. If real property is subject to action for setting aside a **fraudulent conveyance**, file a *lis pendens* on that property.
7. Sample Form:

NOTICE OF LIS PENDENS

TO ALL WHOM IT MAY CONCERN:

TAKE NOTICE that there is pending in the Circuit Court of Boone County, Missouri, a civil action wherein OBLIGEE, is Plaintiff and OBLIGOR and OBLIGOR'S SPOUSE / DRINKING BUDDY / GIRLFRIEND are Defendants; being Cause Number *[number of case]* of the Court;

Pursuant to [section 527.260 of the Revised Statutes of Missouri](#), this Notice is given of the pendency of the action, which is based upon an equitable right, claim, or lien, affecting or designed to affect the following-described real estate situated in Boone County, Missouri, to-wit:

[description of land]

The term of the Court to which such suit is brought is the 2015 term, commencing *[date of commencement of court term]* and

The pendency of such suit is and shall be constructive notice to purchasers or encumbrancers of the real estate from the time of filing of this Notice with the Recorder of Deeds of the County.

EXECUTED this *[ordinal number of date]* day of *[name of month]*, *[number of year]*.

OBLIGEE, Plaintiff

STATE OF MISSOURI)
) ss:
COUNTY OF *[NAME OF COUNTY]*)

ACKNOWLEDGMENT

On this ____ day of _____, 20 ____, before me personally appeared OBLIGEE, known to me to be the OBLIGEE and the person who executed the foregoing **Notice of Lis Pendens**, and she acknowledged to me that she executed the same as her free and voluntary act and deed and the free act for the purposes therein stated.

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal in the County and State aforesaid, on the day and year last above written.

By:

[name of notary]

[seal]

Notary Public

My Commission expires: *[date of expiration of commission]*



Super Liens

1. Regular **judgment liens**

Leightner v. UMB Bank, N.A., 108 S.W.3d 699 (Mo.App.E.D. 2003) provides brief review of the different types of liens that can be used to encumber real estate and enforce both general judgments as well as periodic judgments such as maintenance and child support. Note that a judgment of arrears for a periodic judgment was held in this case to constitute a general judgment, which under Rule 74.08 and Section 511.360 is a self-executing lien.

Rule 74.08:

Except as provided in chapter 454, RSMo, or chapter 517, RSMo, the lien of a judgment commences upon the entry of the judgment, continues for a period of ten years, and is revived by a revival judgment.

Section 511.360:

The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof, as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment, and shall continue for ten years, subject to be revived as herein provided; but when two or more judgments or decrees are rendered at the same time, as between parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered. The provisions of this section relating to the duration of the lien on real estate shall apply only to judgments or decrees rendered or revived after August 28, 1998, and, for all such judgments or decrees entered prior to such date, the lien of such judgment or decree shall continue for three years from the date such lien commenced.

Support liens and encumbrances, such as an FSD administrative order to withhold, do not enjoy priority lien status. *Collector of Revenue of St. Louis v. Parcels of Land Encumbered with Delinquent Tax Liens Land Tax Suit 178*, 533 S.W.3d 816 (Mo.App.E.D. 2017).

2. **Real estate:** Section 454.515

A judgment or order for child support or maintenance payable in periodic installments shall not be a lien on the real estate of the person against whom the judgment or order is rendered until the person entitled to receive payments pursuant to the judgment or order, the division or IV-D agency files a lien and the lien is recorded in the office of the circuit clerk of any county in this state in which said real estate is situated in the manner provided for by the Supreme Court and chapter 511, RSMo.

a. Three-year life

- i. Just file another lien to extend encumbrance
- ii. But be mindful of 10-year presumption of payment rule
- iii. Filing a new lien will not revive the judgment

- iv. A payment on the record by the obligee will not revive the judgment: *J & M Securities v. Mees*, 519 S.W.3d 465 (Mo.App.E.D. 2017)
- b. Can execute partial or total release
- c. May release generally or to specific property
- d. Total release may not clear title
- e. *e.g.*, docketing administrative order (454.490) = judgment = “lien effect” even without a specific 454.515 real estate lien
- f. Title companies may seek verification that no support is due, regardless of lien status, before clearing title
- g. Common sense approach to handling a support arrearage when real estate may be marketable

3. **Personal property:** Section 454.516 RSMo (a/k/a “Dude, where’s my car?”)

- a. FSD accesses DMV title database
- b. Cannot perfect lien unless:
 - i. Support debt must be \$1000
 - ii. Value of property must be \$3000
 - iii. Property not more than seven years old (except for certain historic vehicles)
 - iv. Property not already subject to more than two liens for support
 - v. No more than three support liens in the same calendar year
- c. Liens encumber cars & boats (& boat motors & trailers) and are junior to primary lienholders, usually lenders
 - i. Once the loan is paid off, FSD can seize the property
 - ii. It doesn’t work that way, though
- d. Private parties file liens with Dept. Revenue
 - i. Include certified copy of judgment
 - ii. FSPC pay record or sworn arrearage statement
- e. Department of Revenue charged with keeping database of liens
 - i. Good faith purchaser without notice of the lien, or a lender without notice, takes free of the lien
 - ii. No requirement for an automobile dealer to check the database

- f. Tortuous history in Missouri
 - i. There's a reason for that
 - ii. Statute originally required only that the support be at least \$100 before perfecting a lien
 - iii. Automobile lien program effective in Missouri
 - iv. Too effective ...
 - v. Currently, a child support creditor may file a lien on real property worth \$500 but is precluded from filing an auto lien on a 2015 Mercedes.

4. Workers' compensation benefits: Section 454.517 RSMo

- a. Support debt at least \$100
- b. Perfected by filing with Division of Workers' Compensation
 - i. DWC sends to all attorneys and insurance carriers
 - ii. Notice of lien deemed received within five days of mailing
 - iii. Private parties should also send notice directly to attorneys and insurance carriers
 - iv. Private parties also required to file with:
 - Certified copy of judgment
 - FSPC pay record or sworn arrearage statement
- c. Lien attaches to *all* benefits
- d. What about attorney fees?

See Page v. Green, 758 S.W.2d 173 (Mo.App.S.D. 1988): "When attorneys are denied fees for work prosecuted on behalf of an injured workman, there is a chilling effect upon the ability of an injured party to obtain adequate representation." *See also Gaunt v. Shelter Mut. Ins. Co. and DCSE*, 808 S.W.2d 401, 405 (Mo.App.S.D. 1991) (Attorney as payee on check for client's proceeds has no independent ownership but is only asserting attorney's lien on client's property)

Have the settlement agreement or ALJ recite that attorney fee is owed to counsel and not subject to lien

5. Litigation and personal injury claims: Section 454.518 and 454.519 RSMo

- a. Support debt at least \$100
- b. Lien on lawsuit filed where suit is pending

- c. Attaches to any payment or settlement more than five days after mailing
- d. Insurance companies bound through notice to counsel – even when counsel is “representing” insured and not insurance company
- e. If suit not filed, lien perfected by certified mail to “alleged tortfeasor or the attorney of record, if any.”
- f. Private parties also send notice to others, including:
 - i. Certified copy of judgment
 - ii. FSPC record or sworn arrearage affidavit
 - iii. No harm in sending too many notices: court if case on file; all counsel; any insurance company; tortfeasor directly; obligor
- g. Creditors may use one or both types of liens. *Peoples v. Medical Protective Company*, 584 S.W.3d 339 (Mo.App.W.D. 2019)

6. Decedent’s Estate Distribution: Section 454.514 RSMo

- a. Attaches to any distributive share due an obligor in probate
- b. Filed in probate court and mailed to personal representative
- c. If share includes real property, lien recorded in that county
- d. Personal representative’s bond liable for failure to honor lien
- e. Private creditors include:
 - i. Certified copy of judgment
 - ii. FSPC record or sworn arrearage affidavit

7. Subordination of state tax liens: Section 454.522 RSMo

- a. Only FSD may use
- b. FSD may subordinate certain state tax liens in favor of a support lien filed after the tax liens
- c. One child of the order must reside in Missouri
- d. Not allowed if subordination would enable another superior lienholder to obtain proceeds from sale with nothing passing to the support creditor
- e. Criminalizes collusion by obligor and obligee to defeat taxes secured by liens



Additional Remedies

1. Automatic wage withholding (any party) Section 452.350
2. FSD Orders to Withhold (FSD only)
 1. Administrative Order on Existing Order (AOEO) Section 454.476
 2. Order to Withhold (OTW) Section 454.505
3. Tax Intercepts (FSD only)
 1. Federal tax income refund intercept 42 U.S.C. § 664 and 654(18)
IRC § 6402(c)
 2. State tax income refund intercept Section 143.781.6
Section 143.782(2)
Section 143.784.3
4. License suspensions (any party) Sections 454.1000-1031
 1. Driver's licenses
 2. Business licenses
 3. Professional licenses
 4. Hunting and fishing licenses
 - i. Urgently debated in General Assembly
 - ii. Controlled exclusively by Department of Conservation Section 454.1027
 5. May also be used by private parties, but only through court (FSD may proceed administratively or judicially)
5. Credit bureau reports (FSD only) Section 454.512
6. Passport revocations (FSD only) Section 454.511
7. Lottery intercepts (FSD only) Section 313.321.3
8. Debtors' Exam (any party – always judicial) Section 513.380
See State ex rel. Nothum v. Walsh, 380 S.W.3d 557 (Mo.banc 2012)
9. Spendthrift trust exception (any party – judicial) Section 456.5-503
10. Prejudgment attachment Section 521.010; Rule 85
11. Levy and execution (any party – always judicial) Rule 76
12. Contempt (any party – always judicial)
13. Criminal non-support (State or United States – always judicial)
Not enforcement but to prosecute a crime. *State v. Reed*, 181 S.W.3d 567, 570 (Mo. Banc 2006)



Attributes of IV-D Enforcement Tools

Procedure	Advantages	Disadvantages	Notes
Wage withholding (OTW) 452.350 (clerk) 454.505 (FSD)	Efficient; FSD orders are dynamic via AOEO (454.476) and OTW (454.505)	None	Continual; initiated through circuit clerk or FSD; limited to 50% disposable income
Non-Employer OTW 454.505.4	Immediate encumbrance via statutory lien; some will yield significant immediate collection	Occasionally labor-intensive for certain jointly held bank accounts	For jointly held accounts, see 454.507 RSMo;
Lien: Decedent's Estate 454.514	Immediate encumbrance; efficient; court monitored	Probate estates usually take a long time	Monitor the estate on Casenet
Lien: Real Estate 454.515 (FSD) Rule 74.08 (judgment) 511.360 (judgment)	Immediate encumbrance; title companies search for these to clear for insurance	None	Counsel may enjoy lien priority fight
Lien: Automobiles 454.516	Immediate encumbrance via automated title application	Original lien statute watered down by politics	Support debt > \$1000; car >\$3000 <7 years old unless historic; other restrictions
Lien: Workers' Compensation 454.517	Efficient	None	Counsel intervention to secure workers' atty fee lien paid first, usually garners cooperation
Lien: Litigation and Injury Claims 454.518; 454.519	Efficient; often encumbers significant funds	Knowledge of claim	Technician assistance to communicate with obligee re potential for claims; Casenet review

Procedure	Advantages	Disadvantages	Notes
Federal tax refund intercept →	Efficient 42 U.S.C. 664, 654(18); I.R.C. 6402(c). <i>See</i> 45 C.F.R. 303.72; 13 CSR 30-7.010	None	Innocent spouse relief is at times frustrating for several parties
State tax refund intercept 143.781.6 & 143.782(2)	Efficient	None	Section 143.784.3 describes notice procedures
License suspensions 454.1000-1003 (driving, business, professional, occupational) 454.1023 (lawyers) 454.1027 (hunting & fishing)	Efficient; broad	None	Drivers license may be suspended administratively; also include those ignoring a subpoena in IV-D cases; professional licenses require judicial action; Dept. of Conservation handles hunting & fishing
Passport revocation 454.511	Efficient; often garners early resolution of arrearage	None	U.S. citizens needing passports either have or will soon have good money
Credit bureau reports 454.512	Efficient	Usually ineffective	Bad credit is the least worry of most people delinquent in support
Lottery intercepts 313.321.3	Efficient; often dramatic results	None	Small percentage return but data sharing with state lottery is easy
Garnishment: Wages Rule 90	Limits on collection of disposable income higher than OTW (50-55-60-65%)	A bit inefficient although continual garnishment has worked well; requires 6-month balance statement	Use for problematic obligors when 65% max. is indicated

Procedure	Advantages	Disadvantages	Notes
Garnishment: Other Property Rule 90	Debtor exemptions do not apply in support delinquency enforcement; can provide immediate and significant relief	Requires regular attention to insure compliance	Often more direct involvement in higher-asset cases increases likelihood of success
Execution Rule 76	Debtor exemptions do not apply in support delinquency enforcement; can provide immediate and significant relief	Labor intensive	Evaluate if the anticipated return warrants the work; direct involvement in higher-asset cases increases likelihood of success
Civil Contempt Case law	Personal intervention with the difficult obligor	Labor intensive; too many tripped up by procedural requirements	The debtor “holds the keys to the jail cell,” <i>i.e.</i> , must be able to pay

See Missouri IV-D Law, 3rd ed., Chapter 9, Enforcement, pp. 258-263 (Dan Pingelton, 2022)

