
WAGE ATTACHMENT: THE INS AND OUTS

**DELCO PROPERTY INVESTORS
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I. PURPOSE OF WAGE ATTACHMENT

The attachment of wages is a useful tool for the collection of judgments entered in favor of the judgment creditor landlord. The salary and commissions of a tenant against whom a final judgment is entered, either for delinquent rent or physical damage to the property, may be directed to a judgment creditor landlord in satisfaction of the outstanding judgment in such civil action in a Court of Common Pleas, Magisterial District Court or Philadelphia Municipal Court.

On December 21, 2005, the Supreme Court of Pennsylvania promulgated a new chapter to the Pennsylvania Rules of Civil Procedure, Rules 3301-3312, which governs the attachment of wages, salary and commissions in actions or proceedings for amounts awarded to a judgment creditor landlord arising out of a residential lease.

II. STATUTORY AUTHORITY FOR THE ATTACHMENT OF WAGES

A. The Judicial Code, 42 P.S. § 8127

The statutory authority for the collection of a tenant's wages is provided in Section 8127(a)(3.1) of the Judicial Code, which provides:

The wages, salaries and commissions of individuals shall while in the hands of the employer be exempt from any attachment, execution or other process **except** upon an action or proceeding...**[f]or amounts awarded to a judgment creditor-landlord arising out of a residential lease upon which the court has rendered judgment which is final.**

B. Limitations on Attachment

A landlord's right to collect against a tenant is limited as follows:

A landlord must **deduct from the amount subject to attachment any security deposit** held by the judgment creditor-landlord and forfeited by the judgment debtor-tenant...**unless** the security deposit has been applied to payment of rent due on the same premises for which the judgment for attachment has been entered. 42 P.S. § 8127(a)(3.1).

1. The judgment creditor landlord must prove that the security deposit has been applied to payment of the rent due or damages caused.
2. The wages attached can be **no more than 10% of the NET wages** per pay period of the judgment debtor tenant. 42 Pa.C.S. § 8127(a)(3.1).

- a. “Net Wages” means all wages paid, less the following items:
 - i. Federal, State and Local Income Tax
 - ii. F.I.C.A. Payments and Non-voluntary Retirement Payments
 - iii. Health Insurance Premiums
3. The wages attached may **not place the judgment debtor tenant below the poverty income guideline** as provided by the Federal Department of Health and Human Service website.¹
4. Judgment debtor tenant must have been **personally served with the Complaint; or appeared at the hearing; or filed papers with the Court** in order for wages to be attached. Pa.R.C.P. 3301(b)(2)(ii).
5. Attachment must be initiated by filing the Praecipe to Attach Wages within **5 years of the judgment date**.

III. PROCEDURE TO ATTACH WAGES

A. Pennsylvania Rules of Civil Procedure Nos. 3301-3313

1. **Obtain a Judgment** – the provisions for wage attachment only apply to “judgments” as defined in Pa.R.C.P. 3301.
 - a. May be an action commenced for delinquent rent or physical damage to a leased premises.
 - b. If the judgment is entered in a Magisterial District Court, it must be **transferred to a Court of Common Pleas** in order to attach wages.
2. **Commence Action with the Court** – file a Praecipe for Notice of Intent to Attach Wages.
 - a. The judgment creditor landlord commences an action to attach wages by filing a **Praecipe for Notice of Intent to Attach Wages** with the Prothonotary of the Court of Common Pleas (in Delaware County it is the Office of Judicial Support).² Pa.R.C.P. 3302(a).

¹ The 2011 HHS Poverty Guidelines are attached as **Appendix A**.

² The form for a Praecipe for Notice of Intent to Attach Wages is attached as **Appendix B**.

4. **Judgment Debtor Tenant Presents Defenses/Exemptions** – tenant files a Claim for Exemption from Wage Attachment.

- a. A judgment debtor tenant is entitled to claim an exemption from wage attachment based upon the Federal Poverty Guidelines.
- b. A **Claim for Exemption from Wage Attachment** must be filed with the Prothonotary (Office of Judicial Support) **within 30 days** of service of the Notice of Intent to Attach Wages.⁵ Pa.R.C.P. 3303(a).
- c. If a judgment debtor tenant files a Claim for Exemption within 30 days, the Prothonotary (Office of Judicial Support) shall not issue a Writ of Attachment.
 - i. The Prothonotary (Office of Judicial Support) must send a **Notice of Claim Exemption of Wages from Attachment** to the judgment creditor landlord (or landlord's attorney, if represented), along with a copy of the Claim for Exemption from Wage Attachment.⁶ Pa.R.C.P. 3303(b)(1).
- d. If a judgment debtor tenant files a Claim for Exemption 30 days **after** the Notice of Intent to Attach Wages is served, **and** the Writ of Attachment has already been issued, the attachment of wages shall continue, **unless** the judgment debtor tenant obtains a court order staying or vacating the attachment. Pa.R.C.P. 3303(b)(2).

5. **Judgment Creditor Landlord Challenges Defenses/Exceptions** – landlord files a Motion with the Court.

- a. A judgment creditor landlord may challenge a Claim for Exemption from Wage Attachment by filing a **Motion** with the Court of Common Pleas, requesting the Court to direct the Prothonotary (Office of Judicial Support) to issue a Writ for the Attachment of Wages. Pa.R.C.P. 3303(c).
 - i. The Motion must set forth facts to establish that the landlord is entitled to attach wages (i.e., that a final judgment was entered in a matter involving a residential lease and that the defendant has not

⁵ The form for a Claim for Exemption from Wage Attachment is attached as **Appendix E**.

⁶ The form for a Notice of Claim Exemption of Wages From Attachment is attached as **Appendix F**.

shown an exception to wage attachment, as set forth above).

- b. The Court shall either set a hearing date regarding the dispute or set forth another procedure governing the initial consideration of motions, as may be appropriate.
6. **Attach Wages** – file a Praecipe for Writ of Attachment of Wages and a Writ of Attachment of Wages.
- a. If the judgment debtor tenant is unable to prove a valid exception or defense to the Praecipe to Attach Wages, the judgment creditor landlord shall file a **Praecipe for Writ of Attachment of Wages** with the Prothonotary (Office of Judicial Support) of the Court of Common Pleas, along with a **Writ of Attachment of Wages**.⁷ Pa.R.C.P. 3304.
 - b. The Prothonotary (Office of Judicial Support) **must** issue the **Writ of Attachment of Wages** if:
 - i. The judgment debtor tenant has not timely filed a Claim for Exemption of Wages from Attachment; or
 - ii. A Court entered an Order granting the judgment creditor landlord’s Motion in opposition to the tenant’s defenses or exceptions.
 - c. The Prothonotary (Office of Judicial Support) must send the **Writ of Attachment of Wages** by United States Mail to the judgment debtor tenant **and** the tenant’s employer (“garnishee”). Pa.R.C.P. 3004(b).

7. **Duty of Employer (“Garnishee”)** – remitting the wages

- a. The employer (“garnishee”) of the judgment debtor tenant, once served with the Writ of Attachment of Wages, must send the attached wages to the Prothonotary (Office of Judicial Support) within 15 days from the close of the last pay period in each month.
- b. Employer (“garnishee”) is entitled to deduct from the wage attachment the costs incurred as a result of the bookkeeping necessary to record the transactions, not exceeding \$5.00.

⁷ The form for the Praecipe for the Writ of Attachment of Wages is attached as **Exhibit G**. The form for the Writ of Attachment of Wages is attached as **Exhibit H**.

- c. If an employer is served with more than one wage attachment arising out of a residential lease against the same judgment debtor tenant, the attachments shall be satisfied in the order in which they were served.
- d. Upon receipt of the wages, the Prothonotary (Office of Judicial Support) shall record and send the wages to the judgment creditor landlord.

8. **Duty of Judgment Creditor Landlord** – enter satisfaction of the judgment.

- a. Judgment creditor landlord must maintain an account of amounts received through wage attachment.
- b. Once satisfaction of the total amount of the judgment has been received through the wage attachment, the judgment creditor landlord must enter **satisfaction of the judgment** in the Court of Common Pleas where the judgment is outstanding.
- c. If a judgment creditor landlord fails to enter satisfaction of the judgment for **more than 30 days** after receiving satisfaction, the judgment creditor landlord shall pay **liquidated damages** to the judgment debtor tenant – 1% of the original amount of the judgment for each day of delinquency beyond such 30 days, but no more than 50% of the original amount of the judgment.