

## **Trusteeships in the Delaware Municipal Court FAQ's**

**Why do people apply for appointment of a Trustee?**

A creditor who has sued and obtained a judgment, may obtain an order to garnish wages of the judgment debtor. If a judgment creditor is garnishing your wages, you may not have sufficient funds to make payments to other creditors. In a Trusteeship authorized by R.C. § 2329.70, creditors are generally prohibited from maintaining garnishment proceedings against the debtor. Instead, the debtor makes payments to the Trustee the same amount that would be withheld by the employer in a garnishment, and the Trustee distributes that money to all creditors included in the Trusteeship on a pro-rata basis. In some cases, this can help the debtor avoid bankruptcy and payoff creditors in an orderly manner.

**Does a Trusteeship protect me from all actions by creditors?**

No. The Trusteeship only prevents garnishments. The Trusteeship does not prevent or affect lawsuits by creditors, and it does not prevent other attachments or executions by creditors who obtain judgments. However, a secured creditor who is included in a Trusteeship may be prevented from asserting a lien so long as the debtor complies with the terms of the Trusteeship.

**Should I apply for a Trusteeship anytime I receive a pre-garnishment notice?**

This depends on your circumstances and you should confer with a lawyer to determine the best option for you. Even if you have only one creditor with a judgment and the creditor will not agree to a payment plan, a Trusteeship can prevent the creditor from commencing or maintaining garnishment proceedings. However, you can stop the garnishment without a Trusteeship by making the required periodic payment to the judgment creditor who issues a pre-garnishment notice. If you have multiple judgment creditors attempting to garnish your wages, a Trusteeship may be helpful by stopping the garnishment actions while providing for payments to all of the creditors.

**Is a Trusteeship the same as bankruptcy?**

No. A petition for bankruptcy results in a stay against all creditor actions of any kind against you regardless of the nature of the claims. Further, a final order in a bankruptcy can discharge debts against you. A Trusteeship only operates to stop garnishments and cannot discharge debts.

**Am I required to use the forms available on the court website to apply for a Trusteeship?**

No. Forms are available as a courtesy and convenience. Other proper pleadings and documents may be used. Forms available on the court's website are not legal advice. For legal advice, one must confer with an attorney. The clerk, court, and staff are not permitted to provide legal advice.

**What should I submit with my application for a Trusteeship?**

Applications to begin a new Trusteeship require the Application by Debtor for Appointment of a Trustee, Original Roster of Creditors, and all attachments for each, including all current R.C. § 2716.02 demands (Notice of Court Action to Collect Debt) served on the debtor, and the most recent statement for each creditor on the Roster of Creditors. In addition, the debtor must advance payment for court costs.

**Can I include all my creditors in the Trusteeship?**

No. Only creditors with existing, liquidated claims can be included in a Trusteeship. Future bills, such as utility bills and future credit card bills cannot be paid through a Trusteeship. Also, disputed claims for property damage and personal injury cannot be included in a Trusteeship. However, after a disputed claim is reduced to a judgment, it can be included in the Trusteeship.

**What about creditors with liens on my property?**

Claims secured by liens on personal property can be included in a Trusteeship. However, within ten days of receipt of notice from the court about a Trusteeship, secured creditors may request to be excluded from the Trusteeship in order to enforce their lien. Mortgage creditors (those with a lien on real estate) cannot be included in a Trusteeship. If a debtor erroneously omits to list a secured creditor in a Trusteeship, or incurs a new secured debt after appointment of a Trustee, either the debtor or the secured

creditor may apply to the court to include the secured creditor in the Trusteeship.

**What is a secured creditor?**

A secured creditor is a creditor with lien on property such as a car loan where the creditor's lien is endorsed on the title. Some creditors may also claim possessory liens such as automobile mechanics and dry cleaners who may retain possession of property until payment is made. Judgment creditors may claim a lien on real estate by filing their judgment with the clerk of the common pleas court, and they may claim a lien on personal property via attachment proceedings in court. A creditor who does not have a lien on any property of the debtor is an unsecured creditor.

**What is a liquidated claim?**

Generally, this is a claim where the exact amount due is readily established, usually pursuant to a contract or a court judgment. This can include claims for credit card accounts, unpaid rent, utility bills, loans, and claims for services rendered when the amount sought is undisputed. By contrast, claims for property damage of personal injury are not liquidated until they are reduced to a judgment.

**Am I required to hire a lawyer to help prepare my application for a Trusteeship?**

No. However, a lawyer can help you decide whether a Trusteeship is best for you, and can help you prepare the required application and documents. If you choose to proceed without a lawyer, you proceed at your own risk. The clerk, court, and staff are prohibited from providing legal advice.

**What if I cannot afford a lawyer to help with the application for a Trusteeship?**

Upon order of the court, a limited amount for attorney fees (usually up to \$250) incurred in preparation of documents required to apply for the Trusteeship may be given priority status in distribution of proceeds from the garnishment. This ensures that the lawyer will receive the first \$250 distributed by the Trustee. For fees in excess of said amount, or for other services, attorney fees will be treated as any other creditor and be entitled to a pro rata distribution of proceeds from the Trusteeship.

**When can I file an application for a Trusteeship?**

Only after you have been sued, the creditor has obtained a judgment, and you have been served with a pre-garnishment notice under R.C. § 2716.02 (Notice of Court Action to Collect Debt).

**How much will I have to pay to apply for a Trusteeship?**

You must deposit court costs as established by the court from time to time (usually around \$120), plus a per creditor fee (about \$15) to cover the cost of certified mail notice issued by the court to each creditor when the application is filed.

**If the court grants my application for a Trusteeship, how much will I have to pay to the Trustee?**

The amount varies based on your wages. You will be required to pay that amount of your personal earnings that are not exempt from garnishment. In other words, you will be required to pay to the Trustee the same amount that your employer would be required to withhold from your wages if you were subject to a garnishment order. Generally speaking, 75% of wages (after deduction for taxes and other required deductions) are exempt, leaving 25% subject to garnishment. Forms available on the court's website include a calculation sheet to determine the amount due with each pay period.

**Can the court reduce the amount of my payments?**

No. Revised Code § 2329.70 requires the debtor to pay the amount of personal earnings that is not exempt from garnishment. (This is the same amount that the employer would be required to withhold in a garnishment.) Generally, 75% of disposable earnings are exempt from garnishment. This amount is established by R.C. § 2329.66 and cannot be increased by the court. Disposable earnings include gross personal earnings less deductions required by law, such as taxes and mandatory union dues.

**What if I am already subject to a wage withholding order for child or spousal support?**

Child and spousal support are not deducted from gross wages to calculate disposable earnings. The maximum deduction allowed by law from wages for support and garnishment varies from 50% to 65% depending on whether you have other dependents and whether the wage withholding order includes arrearages.

**Who calculates how much I must pay to the Trustee?**

The debtor must make the calculation with each pay period and submit the payment together with a copy of the pay stub and a calculation worksheet to the Trustee. A worksheet is available on the court web site. The Trustee will verify that the payment is properly calculated.

**How often will I make payments to the Trustee?**

You will be required to make a payment to the Trustee with each paycheck you receive.

**Can I apply for a Trusteeship if I am self-employed?**

No. You can only apply for a Trusteeship if you earn wages that are subject to garnishment. Personal earnings of a self-employed worker are not subject to garnishment. Hence, a self-employed person is not eligible to apply for a Trusteeship. A person who is employed by and receives wages from the person's own small corporation, is not considered to be self-employed.

**How do I know whether the court has approved my application?**

The court will issue a written decision advising whether the application is granted, and appointing a Trustee. If the application is denied, the decision will explain the reasons, and usually allow time for you to correct and amend your application if possible to qualify for a Trusteeship.

**Who is the Trustee?**

If the court grants an application for Trusteeship, the court must appoint the clerk of the court as Trustee.

**What if I miss a payment to the Trustee?**

If you fail to make payments as required in a Trusteeship, the court may terminate the Trusteeship and your creditors will be permitted to commence, or resume, garnishment proceedings. (However, only one creditor at a time may garnish wages.) You will be barred for six months from applying for a new Trusteeship unless you can show that your failure to pay as required did not result from willful neglect. The original order appointing the Trustee may make provision for you to make up the missed payment.

**What is a judgment creditor?**

A person, company, or creditor who has already obtained a court judgment.

**If I need help with documents required for a Trusteeship, who should I ask?**

The clerk's office can provide copies of forms available for use in the court and provide copies of documents filed in cases. However, the staff of the clerk and court cannot offer legal advice. For legal advice, you must confer with an attorney.

**When should I file an application for a Trusteeship?**

Within 15 days after a judgment creditor mails a pre-garnishment notice to you, the creditor may file an affidavit to commence garnishment proceedings. Hence, you should apply for the Trusteeship before expiration of the 15-day period. Often, the Trusteeship application cannot be prepared, filed, and approved within the 15-day period. If you receive notice that your employer has received a garnishment order while your Trusteeship application is pending, you must timely request a hearing on a form provided by the court that issued the garnishment order and attend the hearing to advise the court about the Trusteeship.

**What should I do if I receive a pre-garnishment notice after the court has appointed a Trustee?**

Within 15 days of issuance of the notice, you must advise the judgment creditor, or attorney, who issued the notice about the Trusteeship. You must do this in writing and provide a copy of the order of the court appointing the Trustee. If you receive notice thereafter that your employer has received a garnishment order, you must timely request a hearing on a form provided by the court that issued the garnishment order and attend the hearing to advise the court about the Trusteeship.

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