

The Divorce is Over; Now What?

How to Enforce Decrees
Using Collections Law

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Fair Debt Collections & Practices Act

- 15 USC 1692 et seq.
- Applies to “debt collectors” who regularly collect consumer debts for another person or institution.
- Applies only to the collection of a debt incurred by a consumer primarily for personal, family, or household purposes.
- Strict compliance is required – demand letters, validation, communication, etc.
- Preempts conflicting state law, but state laws (Kentucky Consumer Protection Act) may be more restrictive.

Fair Debt Collections & Practices Act

GOOD NEWS!

- The FDCPA and KCPA do not apply since the “debts” in a Decree are not “consumer debts.”
- However, it is important to be familiar with these statutes before taking any collection action.

Judgments

- CR 54.01: A judgment is a written order of a court adjudicating a claim or claims in an action or proceeding; a final or appealable order.
- In consumer collections, judgments are usually obtained by default, summary, agreement, or after trial.
- In family cases, the judgment is the decree of dissolution which includes the marital settlement agreement as incorporated by reference.
- KRS 426.030: Cannot take any collection/enforcement action for 10 days from entry to allow challenges.

Division of Property vs. Order for Support

- KRS 426.010 – Judgment must include an “ascertained sum of money” to issue execution.
 - “Spouse A shall pay \$10,000 to Spouse B to equalize the marital estate.”
 - “Spouse A shall pay \$10,000 to Spouse B *within 30 days of entry* to equalize the marital estate.”
- Considerations:
 - Timing of payment(s)
 - Is it coming from another asset?
 - Is the paying spouse compliant with terms of Decree?

Division of Property vs. Order for Support

- Order for support in a Decree involves fact-intensive inquiry whether it is an “ascertained sum of money.”
- Generally, the payor must default on the terms of the Decree to warrant execution such as wage garnishment.
- Arrearages must be reduced to a subsequent judgment to obtain the ascertained sum of money.
- Consider using acceleration clauses to trigger execution.

Wage Garnishments

- Continuous until obligation is paid or payor is terminated.
- Procedure:
 - Complete Wage Garnishment Form – AOC 150
 - Mail to court clerk for issuance.
 - Receive back from clerk and mail to employer.
 - Employer returns affidavit and begins garnishing employee.
- Ordinary wage garnishments are issued by the clerk BUT child support garnishments must be signed by judge.

Non-Wage (Bank) Garnishments

- One-time garnishment; not continuous.
- Procedure:
 - Complete Non-Wage Garnishment Form – AOC 150.1
 - Mail to court clerk for issuance.
 - Receive back from clerk and mail to entity (bank).
 - Entity returns affidavit and funds from account. Some entities may hold garnished funds.

Other Enforcement Mechanisms

- Judgment Lien
 - KRS 426.720
- Levy/Writ of Execution



THANK YOU

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