
**FREQUENTLY ASKED QUESTIONS
KANSAS LANDLORD COLLECTION LAWSUITS**

Q. What is a collection lawsuit?

A “collection lawsuit” is a court-based process through which a person or entity seeks to hold another person or entity liable on an unpaid debt.

Q. What information do you need before you will collect my delinquent account?

Please complete the Collection Information Form.

Q. What is a petition?

A “petition” is a formal certified document filed with the Court requesting the Judge to enter a judgment in your favor for the amount of the delinquent account, interest, fees and court costs.

Q. What is a plaintiff?

A “plaintiff” (a/k/a the creditor) is the person or entity which brings a lawsuit against another person or entity in Court.

Q. What is a defendant?

A “defendant” is the person or entity being accused of not paying a delinquent account (i.e. your former tenant).

Q. What is a summons?

A “summons” is the paperwork that tells the defendant that they are being sued and asserts the power of the Court to hear and determine the case. It will also command the defendant to appear before the Court on a specific date and time to answer the petition.

Q. Where will you file my collection lawsuit?

The lawsuit must be filed in the county where the defendant can be located and/or where the damaged rental property is located.

Q. What if I don't know where to locate the defendant?

Our full-time collection staff can assist in identifying a person's whereabouts by running a skip trace. Our licensed private investigators have the ability to obtain access to the following records: phone number databases, credit reports (including information provided on a loan application, credit card application, and in other debt collector databases), job application information, criminal background checks, utility bills (electricity, gas, water, sewage, phone, internet, and cable), social security, disability, and public tax information.

Q. What if I already have a judgment?

Litigation may have been a long and hard-fought battle requiring a trial, perhaps by jury, and maybe even an appeal or you may have obtained it more easily by default. In any case, just having the judgment does not guarantee that you will be paid. On the contrary, the fun may have just begun! Now the search for assets begins - in hopes that there are enough to satisfy the judgment.

Q. How much does it cost to file a collection suit?

Prior to filing a lawsuit, The Law Office of Anderson & Associates will invoice you for the Court's filing fee, and a \$40.00 private process server fee. Please refer to the Fee Schedule.

Q. What is your fee?

All collection cases are handled on a contingent fee basis where the law firm is paid 30% of the recovery. We will also try to collect and reimburse to you the court costs and private process server fees.

Q. Why do I need a lawyer to file a collection lawsuit?

If the delinquent account is owned in the name of a business entity, you are required by law to be represented by a lawyer. If the delinquent account is owned in your individual name, you may be able to file a lawsuit without a lawyer. Creditors are fundamentally no different than any other type of business owner – they aim to make their businesses profitable while avoiding liability. Hiring The Law Offices of Anderson & Associates to help you achieve these goals is a smart business move.

Q. How long does the collection process take?

A court date will be scheduled approximately five (5) weeks after the petition is filed. Our private process server will give a copy of your petition and the court summons to the defendant at least four (4) days before the court date.

- If the defendant has been served and fails to appear in Court, the Judge will enter a default judgment. A default judgment becomes final after thirty (30) days.
- If the defendant appears in Court and disputes the allegations in your petition, the Judge will set the case for a status hearing and then a trial approximately 90 (ninety) days later.

After a judgment becomes final, a garnishment can be sent to the Sheriff.

Q. What notice is required prior to filing my collection lawsuit?

Kansas law requires that a plaintiff make a demand on the defendant requiring them to pay the amount of the delinquent account, interest, fees and court costs prior to filing a lawsuit. The Law Offices of Anderson & Associates will send the demand for you. This service is included in the contingent fee. A landlord must also send a security deposit reconciliation letter within 30 days of the tenant's move in order to succeed on in a damages lawsuit.

Q. What is the FDCPA?

The Federal Trade Commission (FTC), the nation's consumer protection agency, enforces the Fair Debt Collection Practices Act (FDCPA), which prohibits debt collectors from using abusive, unfair, or deceptive practices to collect a delinquent account against a defendant.

Q. What is the process for the collection of a delinquent account?

1st Step – The Law Offices of Anderson & Associates will send a written demand letter to the defendant requiring her to pay the delinquent account, interest, fees and court costs. The letter will also prompt the defendant to contact us if they want to resolve the lawsuit amicably.

2nd Step – The Law Offices of Anderson & Associates will file a collection petition at the courthouse on your behalf.

3rd Step – The court clerk will schedule the case for a hearing and issue a summons requiring the tenant(s) to appear in Court.

4th Step – A private process server will serve a copy of the petition and summons on the tenant(s).

5th Step – The Law Offices of Anderson & Associates will appear in Court on your behalf and obtain a judgment.

6th Step – The Law Offices of Anderson & Associates will contact you with the Court's results and ask you if you want to use garnishments to collect on the judgment or prefer a repayment plan.

7th Step – Upon request, The Law Offices of Anderson & Associates will file a writ of garnishment with the Court and request money be sent to our offices.

8th Step – Upon request, The Law Offices of Anderson & Associates will set up a payment plan with the defendant to pay the delinquent account, interest, fees and court costs due to you.

Q. After you file the collection lawsuit, I was told you have to serve the other party. What does that mean?

The Law Offices of Anderson & Associates must notify the defendant that they are being sued by providing them with a copy of the petition and summons. The petition and summons can be served on the defendant, someone over the age of 12 present at the defendant's home, a member of the defendant's family or by certified mail. Service must be made at least four (4) days before the court date listed on the summons.

Q. Why can't I serve the paperwork on the defendant?

A party to a lawsuit cannot serve papers in their own case. Most counties require a registered private process server or a Deputy Sheriff to serve papers. The Law Offices of Anderson & Associates uses private process servers at Sentinel Private Investigations. The fee for their service is \$40.00 per address.

Q. Do I need to appear at the court date?

You do not need to appear at the first court date. An attorney at The Law Offices of Anderson & Associates will appear on your behalf and request the Judge enter a judgment in your favor and against the defendant.

Q. What is a judgment?

A “judgment” is a written decision by a Judge regarding the rights and liabilities of the parties in a lawsuit. A judgment also generally provides the Court’s explanation of why it has chosen to make a particular decision.

Q. What is a default judgment?

A “default judgment” is a binding judgment, issued by a Judge, based on the defendant’s failure to appear in Court on the date listed on the summons.

Q. What is a consent judgment?

A “consent judgment” is a binding judgment, issued by a judge, based on an agreement between you and the defendant which settles the case.

Q. What is a stay of execution?

A “stay of execution” is a court order to temporarily suspend the execution of a judgment. The word “execution” does not mean the death penalty - it refers to the imposition of whatever judgment is being stayed. A stay can be granted in two ways: (1) automatically by the operation of law or (2) conventionally, when you and the defendant agree that no execution shall occur for a certain period of time.

Q. What happens if the defendant appears in Court and disputes the petition?

If the defendant appears at the first court date and disputes the claims made in the petition, the Judge will schedule the case for a status conference sixty (60) to ninety (90) days later in order to allow the parties time to conduct discovery. After discovery is complete, the Court will schedule an evidentiary trial.

Q. What do you need from me if my case is scheduled for a trial?

The docket clerk at The Law Offices of Anderson & Associates will inform you of the trial date and location. She will also request you provide her with the following information at least two (2) days prior to the trial date:

1. The name and phone number of the witness who will appear on the owner’s behalf;
2. A copy of the Lease or a statement that one does not exist;
3. An updated payment ledger;
4. A copy of the move-in / move-out statements;
5. A copy of your welcome letter (only applicable if you purchased the property during the tenancy);
and
6. Photographs of the damages;
7. Receipts for the repairs;
8. The security deposit reconciliation letter.

Q. Do I have to appear at the trial?

You or someone appointed by your business on your behalf will need to appear at the trial.

Q. Can someone else go to the trial instead of me?

You do not have an automatic right to have a friend or family member act on your behalf in Court; however, your property manager or someone you appoint to manage your business can appear on your behalf if they have knowledge of the case.

Q. What happens at the trial if I do not show up?

If a plaintiff fails to appear for their civil trial, the case will most likely be dismissed.

Q. What happens at the trial if my tenant does not show up?

If a defendant fails to appear for a civil trial, the Judge will most likely enter a judgment in your favor.

Q. What happens in a trial?

In a trial, a Judge will examine the evidence to decide whether, by a “preponderance of the evidence” (it is more likely or not) the defendant owes you on the delinquent account, interest, fees and court costs. An attorney at The Law Offices of Anderson & Associates will have the opportunity to argue your case first and then the defendant will be able to ask you questions, refute your evidence, and offer their own evidence.

Q. The tenant was ordered to pay me by the Judge, but they are refusing. What can I do?

If the defendant fails to offer us an acceptable repayment plan, The Law Offices of Anderson & Associates will file a writ of garnishment with the Court on your behalf.

Q. What is a garnishment?

A “garnishment” is a process requested by a judgment creditor (plaintiff) by which the Court orders the seizure or attachment of the property of a judgment debtor (defendant) in the possession or control of a third party (garnishee).

Q. What is a judgment creditor?

The “judgment creditor” (plaintiff) is the person who receives the money in a judgment and is entitled to enforcement of that judgment through a garnishment.

Q. What is a judgment debtor?

A “judgment debtor” (defendant) is a person against whom a judgment ordering her to pay a sum of money has been obtained and remains unsatisfied.

Q. What is a garnishee?

The “garnishee” is the person or entity in possession of the property of the defendant.

What is a wage garnishment?

A “wage garnishment” is a legal procedure through which a portion of a defendant’s earnings is required to be withheld by an employer for the payment of a judgment. The law sets the maximum amount that may be garnished in any workweek or pay period, regardless of the number of garnishment orders received by the employer. For ordinary garnishments (i.e., those not for support, bankruptcy, or any state or federal tax), the weekly amount may not exceed the lesser of two figures: twenty-five percent (25.00%) of the employee's disposable earnings, or the amount by which an employee's disposable earnings are greater than 30 times the minimum wage (currently \$7.25 an hour in Kansas).

For illustration, if the pay period is weekly and disposable earnings are \$217.50 ($\7.25×30) or less, there can be no garnishment. If disposable earnings are more than \$217.50 but less than \$290.00 ($\$7.25 \times 40$), the amount above \$217.50 can be garnished. A maximum of 25 percent can be garnished, if disposable income earnings are \$290.00 or more. When pay periods cover more than one week, multiples of the weekly restrictions must be used to calculate the maximum amounts that may be garnished. The table and examples at the end of this fact sheet illustrate these amounts.

Q. What is a bank garnishment?

A “bank garnishment” is a legal procedure through which all of a defendant’s funds are required to be held/seized by a bank for the payment of a judgment.

Q. What is an attachment?

An “attachment” is a legal procedure through which all of the defendant’s money and/or property in the hands of the garnishee are required to be held/seized by for payment of a judgment. Most counties require that the plaintiff list the defendant’s social security number.

Q. What is a judgment lien?

If a judgment was rendered by a Circuit Court, the plaintiff has an automatic lien on any real property owned by the defendant in that county. If a judgment was entered by an Associate Division, the plaintiff must request that the judgment be transcribed to the Circuit Court to create a lien on real estate. Please note that you will only be paid upon sale of the defendant’s real estate.

Q. What is a debtor examination?

A “debtor examination” is a court proceeding where the plaintiff is entitled to ask questions of the defendant, under oath, regarding her property, assets, debts, and income. Before asking the Court for a debtor examination, the plaintiff must have tried without success to collect on the judgment and obtain personal service on the defendant of a motion for examination.

Q. What is a contempt citation?

If a defendant fails to appear at the debtor examination, the plaintiff may request a subsequent contempt citation hearing. A “contempt citation” is a Court order that declares a person or entity to have disobeyed the Court. This is a judge's strongest power to impose sanctions for acts that disrupt the Court’s processes.

Q. What is a bench warrant?

If a defendant fails to appear at the contempt citation hearing, the plaintiff may request the Court to issue a bench warrant for the defendant's arrest for the defendant's contempt of court.

Q. How much does a garnishment cost?

Prior to filing a writ of garnishment, The Law Office of Anderson & Associates will invoice you for the Court's garnishment filing fee. Please refer to the Fee Schedule.

Q. What is a head of household exemption?

Kansas does not recognize this exemption.

Q. What kind of assets are exempt from garnishment?

Social Security benefits, Supplemental Security Income benefits, veterans benefits, federal employee and civil service retirement benefits, and benefits administered by the Railroad Retirement Board are not garnishable.

Q. When will I receive money from Anderson & Associates?

In Kansas, garnishments are perpetual, which means they only need to be filed one time.

Q. Should I accept a payment arrangement?

A plaintiff is not required to accept monthly installment payments on a judgment; however, it often makes good business sense to accept money now over a possibility of recovery from a garnishment later. Under most payment arrangement agreements, penalties and interest continue to accrue until the balance is paid in full.

Q. What happens if the defendant misses an installment?

If a defendant misses an installment under a payment arrangement agreement, The Law Offices of Anderson & Associates will file a garnishment with the Court.

Q. What if I don't know where the defendant works or banks?

Our full-time collection staff can assist in locating a person's assets by running a skip trace. We and our licensed private investigators may obtain access to the following records: phone number databases, credit reports (including information provided on a loan application, credit card application, and in other debt collector databases), job application information, criminal background checks, utility bills (electricity, gas, water, sewage, phone, internet, and cable), social security, disability, and public tax information.

Q. How can I enforce a judgment against a defendant in another state?

When the property of the defendant is located in another state, the plaintiff must register the judgment with that state. To register a judgment, the plaintiff must complete an application attaching an affidavit, an

authenticated or certified copy of the judgment and pay a filing fee. The plaintiff must give the defendant notice of the filing.

Q. How long does a plaintiff have to collect on a judgment?

A Kansas judgment is enforceable for five (5) years. If not renewed, or executed within this period, it will become dormant and cease to operate as a lien on the defendant's real estate. A dormant judgment may be revived if the plaintiff files a motion for revival with the Court within two (2) years after the date on which the judgment became dormant.

Q. If I have further questions, who should I contact at Anderson & Associates?

If The Law Offices of Anderson & Associates has obtained a money judgment on your behalf, the docket clerk will email or call you to ask if you want us to collect the money on your behalf. You will be directed to talk with the collection department at 816-931-2207 or email us at collect@mokslaw.com.