

Chapter 25

JUDGMENT COLLECTION*

Sec. 25-1.	Purpose.
Sec. 25-2.	Definitions.
Sec. 25-3.	Examination of judgment debtor.
Sec. 25-4.	Reserved.
Sec. 25-5.	Enforcement of foreign judgments.
Sec. 25-6.	Earnings garnishment remedies.
Sec. 25-7.	Attachment remedy.
Sec. 25-8.	Execution remedy.
Sec. 25-9.	Repossession remedy.
Sec. 25-10.	Property exemptions.
Sec. 25-11.	Secured interests in collateral.

*Cross reference—Civil procedure, ch. 1.

Sec. 25-1. Purpose.

The purpose of this Judgment Collection Ordinance is to provide the legal means to enforce judgments obtained through the Cherokee Court and to provide standardized procedures to ensure consistent and uniform due process. (Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

Sec. 25-2. Definitions.

As used in this chapter:

(a) *Affidavit* means a written statement of facts sworn to by the person signing it and verified by a notary public.

(b) *Aggregate value* means the sum total of the debtor's equity in the property.

(c) *Attachment* means a legal procedure before the Court whereby the Police are authorized and required to seize certain personal property belonging to a debtor in order to ensure that a creditor will be able to collect on a judgment when it is finally entered in the Court.

(d) *Court* means the Cherokee Court of Indian Offenses, or its successor Tribal Court.

(e) *Clerk or Clerk of Court* means the Clerk of the Cherokee Court of Indian Offenses or its successor.

(f) *Dependent* means any individual, including a spouse, who requires and is actually receiving substantial support and maintenance from the debtor.

(g) *Disposable earnings* means that part of earnings remaining after deducting federal, state, and social security taxes.

(h) *Earnings* means income whether designated as wages, salary, commission, or otherwise. Notwithstanding the foregoing, per capita distributions of net gaming revenues from the gaming enterprises of the Eastern Band of Cherokee Indians shall not be considered earnings for purposes of judgment collection, except as specifically set forth in section 16-23 of the Cherokee Code.

(i) *Earnings garnishment* means the legal process through which the earnings of a debtor are required to be withheld by a third party for payment of a Court sanctioned judgment.

(j) *Equipment* means goods used or bought for use primarily in a business.

(k) *Equity* means the fair market value of property, less any liens on that property.

(l) *Execution* means the legal procedure that takes place after the Court has entered a judgment, whereby the Police are authorized and required to enforce the Court's judgment by seizing certain personal property of the judgment debtor.

(m) *Exempt* means free from any lien obtained by judicial proceedings and not liable to seizure or sale on execution or on any provisional or final process issued from any Court.

(n) *Foreign courts* means the courts of the various federal, state, and federally recognized Indian Tribes of the United States.

(o) *Judge* means a Judge of the Court who was appointed by the Eastern Band of Cherokee Tribal Council with the responsibility for administration of the Court.

(p) *Judgment* means:

(1) The determination of the action. It may be final or interlocutory.

(2) Each judgment shall specify the relief granted or other determination of the action, and the name and place of residence of each party to the action.

(3) Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded the relief in the pleadings. If there is no answer the relief granted to the plaintiff shall not exceed that demanded in the complaint. If the amount of money sought was excluded from the demand for judgment, the Court shall require the plaintiff to specify the amount of money claimed and provide that information to the Court and to the other parties prior to the Court rendering judgment.

(q) *Judgment creditor* means the person who has obtained a Court judgment against a debtor.

(r) *Judgment debtor* means the person against whom a Court judgment has been obtained.

(s) *Order* means any final action, mandate, precept, command or direction authoritatively given, or ruling of a Court on a pleading, motion, finding, objection, sentence, writ, etc. Order also includes any direction of a Court or a Judge made or entered in writing, and not included in a judgment, which determines some point or directs some step in the proceedings.

(t) *Partial judgment* means the order and/or ruling of the Court which only disposes of part of the action against one or some of the parties. Partial judgment will be appropriate when there are several parties to a lawsuit.

(u) *Petitioner* means the person who files a petition, i.e., initiates a proceeding in the Court.

(v) *Police* means the Police Department of the Eastern Band of Cherokee.

(w) *Service* or *served* means delivery of legal documents which must be presented in either of the following manners:

- (1) Document(s) personally hand delivered to the named party; or
- (2) Sent by certified mail.

All service must be documented and a copy must be delivered to the Clerk of the Court.

(x) *Writ* means an order of the Court.
(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

Sec. 25-3. Examination of judgment debtor.

(a) Within five years of the date a judgment has been entered, the judgment creditor may file a Motion for Examination of the Judgment Debtor with the Court requesting the personal appearance of the judgment debtor in the Court to answer specific questions regarding the judgment debtor's personal assets. A Motion for Examination of Judgment Debtor must be served on the debtor at least 21 days before the hearing.

(b) At the examination the Judge shall swear the judgment debtor under oath and the judgment creditor and/or the Judge may ask questions directly related to the judgment debtor's personal assets and finances. The judgment creditor may request a subpoena from the Court for relevant financial documentation, such as, bank records, payroll stubs, tax returns, etc., to be provided by the judgment debtor at the hearing.

(c) If the judgment debtor fails to appear after notice of the hearing, the judgment debtor shall be subject to the civil contempt powers of the Court.
(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

Sec. 25-4. Reserved.

Sec. 25-5. Enforcement of foreign judgments.

(a) Full faith and credit shall be given to judicial proceedings of all federal Courts, state Courts, and Courts of the federally recognized Indian nations, Tribes, or bands, including Courts of Indian offenses that extend full faith and credit to judgments and orders of the Eastern Band of Cherokee Court. The purpose of this chapter is to promote justice, encourage better relations between the Eastern Band and other jurisdictions, and to encourage reciprocal action by foreign Courts. Additionally, the Court may enforce a foreign judgment under principles of comity when it would serve justice to do so.

(b) Any person who has obtained a foreign court judgment shall be entitled to seek enforcement of the judgment through the Court. The judicial orders and judgments of foreign Courts, unless objected to, have the same effect and are subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as judgments of the Eastern Band of Cherokee Court and shall be enforced or satisfied in like manner.

(c) The petitioner shall file a written petition with the Clerk of the Court, which shall be accompanied by an authenticated copy of the foreign Court's judgment sought to be enforced. The petition shall set forth the following:

- (1) The names of all parties to the foreign Court judgment sought to be recognized and their respective addresses;

- (2) The type of relief granted in the foreign Court's judgment;
- (3) The date the foreign Court's judgment was entered;
- (4) The record of any subsequent entries or Court actions affecting the foreign Court's judgment, such as levies, execution, garnishment, payments in partial satisfaction, etc.; and
- (5) Any additional information the petitioner believes relevant.

(d) Promptly upon the filing of the foreign judgment the Clerk of the Court shall serve notice of the filing of the foreign judgment to the judgment debtor. The judgment debtor shall have 15 days in which to file an objection to the recognition of the foreign Court judgment with the Court, if there is no such objection, the judgment shall be enforced.

(e) If recognition of a judgment is objected to by the judgment debtor, the Judge must be satisfied, upon application and proof by the judgment debtor with respect to subsections (1) through (5), that the following conditions are present:

- (1) The foreign court had personal and subject matter jurisdiction;
- (2) The order or judgment was obtained without, fraud, duress, or coercion;
- (3) The order of judgment was obtained through a process that afforded fair notice and fair hearing;
- (4) The order or judgment does not contravene the public policy of the Eastern Band of Cherokee Indians; and
- (5) The order or judgment is final, valid and enforceable under the laws and procedures of the rendering Court.

(f) If the Court is satisfied that the five elements listed above been met, then the Court shall enter a judgment in favor of the petitioner which shall entitle the petitioner to enforce his judgment against the judgment creditor in the Tribe's jurisdiction.

(g) Pursuant to 108 Stat. 1796, of the federal statutes, the Eastern Band of Cherokee Court shall give full faith and credit to all Protection Orders issued consistently with subsection (b) of said statute provided the Protection Order is filed with the Court and entered with law enforcement within 30 days of Court jurisdictional residency. However, law enforcement may immediately enforce a Protection Order during the interim when provided with notice and a copy of the Protection Order.
(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

Sec. 25-6. Earnings garnishment remedies.

(a) Within five years after a Court order or judgment has been entered against a judgment debtor, the judgment creditor may enforce the judgment in the Court by submitting a Motion for a Writ of Garnishment with the Court.

(b) The Motion for Writ of Garnishment shall be served on the judgment debtor 21 days before the date set to hear the Motion for Writ of Garnishment.

(c) The maximum portion of earnings of a judgment debtor that are subject to garnishment is 20 percent of disposable earnings.

- (1) At the hearing, the judgment debtor may present evidence to establish by a preponderance of the evidence that garnishment of any wages will impose a substantial hardship upon the health and welfare of the judgment debtor.
- (2) The judgment debtor may also put on evidence that because of substantial hardship a lesser amount than the 20 percent set forth above in subsection (c) should be garnished.
- (3) Upon the presentation of substantial hardship evidence by the judgment debtor, the Judge shall determine whether or not a substantial hardship has been demonstrated and whether a smaller portion of the debtor's wages should be subject to garnishment.

(4) If a garnishment is defeated or reduced by a judgment debtor, the financial status of the judgment debtor will be evaluated every 60 days upon request of the judgment creditor, to determine whether the judgment debtor is able to pay the garnishment amount sought.

(d) The judgment debtor may establish by a preponderance of the evidence that the garnishment was wrongful either by showing there was inadequate service or no valid judgment in effect or that the judgment debtor has already satisfied the debt for which the garnishment was issued or for any other legally valid reason.

(1) If the judgment debtor establishes that it was a wrongful garnishment, the judgment creditor may be fined up to \$500.00 and all attorney's fees and Court costs incurred by the judgment debtor shall be paid by the judgment creditor.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

Sec. 25-7. Attachment remedy.

(a) At the time of the issuance of a summons and complaint in a civil action, or at any time prior to final judgment, a creditor may file with the Clerk of the Court a request for a prejudgment Order of Attachment.

(b) All requests for prejudgment Order of Attachment shall be accompanied by an affidavit of the creditor which shall contain the following facts:

- (1) The nature and specific amount of the debt that is owed to the creditor by the debtor; and
- (2) That the personal property being attached must be specifically identified as nontrust personal property belonging to the debtor; and
- (3) That the creditor has reasonable cause to believe that the specific personal property sought to be attached may be lost, damaged, vandalized, or removed from Cherokee jurisdiction prior to payment of a final judgment and such loss, damage,

vandalism or removal of the property would jeopardize the ability of the creditor to collect on the judgment that may later be obtained.

(c) If the Judge or Court is satisfied after reviewing the complaint and affidavit, the Judge or Court may issue an Order of Attachment of the designated personal property. The Police shall be given the Order of Attachment, and the Police shall seize any property identified by the order.

- (1) Seized property shall be kept in storage under the control of the Police or in the event that a motor vehicle is seized, said seized vehicle shall be kept in the parking lot of the Police.
- (2) Said personal property shall be held by the Police pending any further order of the Court.

(d) If a creditor prevails on the complaint against the debtor, the judgment creditor must follow section 25-8 in regards to the sale of seized property.

(e) An Order of Attachment shall not be issued until the creditor has filed with the Clerk a surety bond or cash bond in the sum of \$500.00. Said bond shall be necessary to provide adequate security to the debtor for any damages the debtor may sustain by reason of the attachment, and shall be filed with the Court to the effect that if the debtor recovers the judgment the creditor shall pay all damages which the debtor may sustain by reason of the attachment.

(f) The debtor shall be served with the Order of Attachment at the time the Police seizes the personal property of the debtor. If the debtor is not available or present at the time the personal property is seized, said Order of Attachment shall be posted in a conspicuous place on the door of the debtor's home, and a copy sent by certified mail to the debtor. Such service shall be documented for Court records.

(g) At any time following the issuance of an Order of Attachment, the debtor shall be entitled to challenge the validity of the issuance of that Order by filing a Response to Order of Attachment. At the time that the response is filed with

the Clerk of the Court, the Court shall note a hearing, and notice of said hearing shall be served on the creditor at least 15 days before that hearing. At the hearing the debtor must establish by a preponderance of the evidence that:

- (1) The specified personal property sought to be attached would not be likely to be lost, damaged, vandalized, or removed from the Cherokee jurisdiction prior to final judgment; or
- (2) That said loss, damage, vandalism, or removal of property would not result in hindering the ability of the creditor to collect on a judgment if one should subsequently be obtained; or
- (3) That no debt is owed to the creditor; or
- (4) That the property sought to be attached is exempt under section 25-10.

(h) If the Court determines that the prejudgment Order of Attachment was wrongfully issued, the Court may impose a fine up to \$500.00 and order payment of the debtor's attorney fees and costs.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

Sec. 25-8. Execution remedy.

(a) A judgment which requires payment of money or the delivery of property may be enforced by an Order of Execution in the Court within five years after judgment is entered.

- (1) A judgment creditor shall file a written Motion with the Clerk of the Court containing a concise statement of facts regarding the judgment and the judgment creditor's interest in seizing and executing upon the personal property to satisfy the judgment.
- (2) The Motion shall be personally served on the judgment debtor at least 15 days prior to the hearing.

(b) At the hearing, if the Judge is satisfied that the judgment creditor remains unsatisfied and there exists personal property of the judgment debtor that is not exempt under section 25-10, the

Judge shall issue an Order of Execution. The Order of Execution shall specify the personal property that may be seized by the Police.

- (1) Personal property that is seized by the Police shall be held in storage or in the case of a motor vehicle in the parking lot under the control and authority of the Police and shall not be removed pending further order of the Court.
- (2) Any property so seized shall be itemized in a receipt by the Police, and a copy of said receipt will be delivered to the Clerk of the Court.

(c) Reserved.

(d) Within 14 days after seizure of the property seized under the Writ of Execution, the Clerk of Court shall post at the place designated by the Cherokee Tribal Council for the posting of legal notices and at least two public places within the Cherokee Indian Reservation, notices of sale containing a full description of the property to be sold, together with the appraised value of each item and the time and place of sale.

- (1) The sale shall be held not less than ten, nor more than 20, days after the posting of notice as provided above.
- (2) The sale shall be conducted between the hours of 9:00 a.m. and 4:00 p.m. at the Cherokee Courthouse or such other public place as may be designated by the Clerk.
- (3) The Clerk of the Court shall sell the property publicly to the highest bidder for cash.

(e) The Clerk shall pay into the Court the expenses of the sale and any unpaid Court costs of either party from the proceeds of sale and shall pay the balance up to the full amount of the judgment to the judgment creditor. Any excess shall be returned to the judgment debtor. The Clerk shall deliver a bill of sale or deed, whichever shall be appropriate, to the buyer upon request.

(f) If the Clerk is unable to sell the property seized under an Order of Execution, the Clerk may hold the property for 14 additional days after the scheduled sale.

- (1) If the property remains unsold after the additional 14-day period, then upon request of the judgment creditor and payment of all costs, said seized personal property may be released to the judgment creditor and it shall be credited against the amount owed on the judgment.
- (2) If the property remains unsold and unclaimed by the judgment creditor, the Clerk shall declare the property back to the judgment debtor by written notice. If said seized property is not assumed by the judgment debtor within 30 days, the property may be deemed abandoned and destroyed by the Clerk.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

Sec. 25-9. Repossession remedy.

(a) A creditor shall repossess personal property when the debtor is in default on the outstanding balance due on an installment contract only by initiating legal proceedings through the Court which leads to a Court order authorizing repossession.

- (1) The creditor shall file a complaint for repossession which shall contain a concise statement of the creditor's claim against the debtor. The complaint shall be served on the debtor at least 15 days before the hearing.
- (2) The debtor may file an answer to the creditor's complaint at any time prior to the hearing.

(b) At the hearing both creditor and debtor may present documentary evidence and witnesses to support their positions in the debt dispute. If the Judge determines at the hearing that the repossession is in fact justified, the Judge shall issue an order authorizing the creditor to repossess the personal property involved. Any

such order shall direct that a creditor may repossess the property only when accompanied by a Police Officer.

(c) If a creditor fails to abide by these rules for repossession and seeks to seize the personal property of a debtor without a written Order of Repossession from the Court, the creditor may be subject to one or more of the following sanctions:

- (1) Business license or permit to transact business on the reservation shall be suspended for a period of 30 days;
- (2) A fine shall be imposed in an amount not to exceed \$1,000.00;
- (3) The personal property unlawfully seized shall be returned to the debtor pending a hearing on repossession.

(d) A creditor may repossess personal property that is subject to a valid security interest without a court order, provided that the repossession is authorized by the voluntary written consent of the debtor given after a default on an installment contract. A pre-default consent shall be void and unenforceable. Attempted use of a pre-default consent, or any breach of the peace by the creditor or his agent, shall be subject to sanctions under subsection (c) of this section.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

Sec. 25-10. Property exemptions.

(a) This section shall be construed to secure its full benefit to debtors and to advance the humane purpose of preserving to debtors and their dependents the means of obtaining a livelihood, the enjoyment of property necessary to sustain life and the opportunity to avoid becoming public charges.

(b) No property of a judgment debtor shall be seized except pursuant to a valid Order of Execution entered by the court pursuant to section 25-8.

(c) The debtor's interest in or right to receive the following property is exempt:

- (1) *Homestead and real property.* The designated place of residence by the family. This homestead exemption does not apply

in the case of a judgment creditor who holds a valid security interest in the judgment debtor's home or residential lease, through a mortgage, deed of trust, or other written agreement securing a loan. All other real property in which the debtor owns a possessory interest in is also entitled to a full exemption from any collection process. The homestead and real property exemption is automatic and no filing of any documents shall be necessary to preserve it.

- (2) *Consumer goods.* Household goods and furnishings, wearing apparel, keepsakes, jewelry and other articles of personal adornment, appliances, books, musical instruments, firearms, sporting goods, animals or other tangible personal property held primarily for the personal, family or household use of the debtor or a dependent of the debtor, not to exceed \$5,000.00 in aggregate value.
- (3) *Business property.* Equipment, inventory, and professional books used in the business of the debtor or the business of a dependent of the debtor, not to exceed \$5,000.00 in aggregate value.
- (4) *Child support, family support or maintenance payments.* Alimony, child support, family support, maintenance or separate maintenance payments to the extent reasonably necessary for the support of the debtor and the debtor's dependents.
- (5) *Motor vehicle.* One motor vehicle not to exceed \$2,000.00 in equity value. As such, if the fair market value of the vehicle less any liens on the vehicle is less than \$2,000.00 then the vehicle is exempt.
- (6) *Provisions for burial.* Cemetery lots, above ground burial facilities, burial monuments, tombstones, coffins or other articles for the burial of the dead owned by the debtor and intended for the burial of the debtor or the debtor's family.
- (7) *Per capita distributions.* Per capita distributions of net gaming revenues from gaming enterprises of the Eastern Band of

Cherokee shall be completely exempt from any garnishment or execution, except as set forth in the section 16-23 of the Cherokee Code. This per capita distribution exemption is automatic and no filing of any documents shall be necessary to preserve it.

- (8) *Bonuses and casino winnings.* Bonuses and casino winnings shall be exempt.

(d) Other than the homestead, real property, and per capita exemptions, exempt property is not exempt unless affirmatively claimed as exempt. A debtor shall affirmatively claim an exemption of select specific property. The debtor may make the claim at the time of seizure of property or within a reasonable time after the seizure, but shall make the claim prior to the disposition of the property by sale. With respect to property partially exempt under this section, the claiming of an exemption includes the process of selection required of the debtor.

- (1) The debtor or a person acting on the debtor's behalf shall make any required affirmative claim, in writing, to the Court or a Police Officer seeking to impose a lien by court action upon the property in which an exemption is claimed.
 - (2) A debtor waives his or her exemption rights by failing to follow the procedures under this section. A contractual waiver of exemption rights by any debtor before judgment on the claim is void.
 - (3) Upon a claim of exemption rights by the debtor to the Court or the Police Officer the Clerk shall set the matter for hearing by the Court and give at least 15 days' notice to the parties. The Court, in making a determination as to the extent property is reasonably necessary for the support of the debtor and the debtor's dependents, is not limited to the standard of living to which the debtor and the debtor's dependents have become accustomed.
- (Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

Sec. 25-11. Secured interests in collateral.

(a) In connection with a loan transaction or an agreement to pay a debt, the Tribe or Tribal entity may create a secured interest in collateral. "Collateral" consists of the following property whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, together with any and all additions, attachments, accessories and accessions thereto and replacements thereof, any after-acquired similar properties, all supporting obligations relating thereto, and the proceeds and products thereof, including insurance proceeds: accounts (including health-care-insurance receivables), equipment, general intangibles (including payment intangibles), inventory, instruments (including promissory notes), deposit accounts, documents, investment property, chattel paper, letter-of-credit rights, and other collateral not herein specified.

(b) A secured interest in collateral is created by execution of a security agreement and financing statement, which may be combined into a single document. The financing statement or combined document is deemed to be properly filed and the security interest perfected when the statement or combined document is maintained in the files of the Budget and Finance Office or the Tribal program or Tribal entity obtaining the security interest, or when the collateral is possessed by the Tribe or Tribal entity.
(Ord. No. 96, 1-10-2006)



EASTERN BAND OF CHEROKEE INDIANS
THE CHEROKEE COURT
 POST OFFICE BOX 1629
 CHEROKEE, NC 28719

Case. _____

Plaintiff _____

 V _____
 Defendant _____

 Address _____

Motion for Remedy
 Pursuant to Chapter 25

Motion for Examination: requesting the personal appearance of the judgment debtor in the Court to answer specific questions regarding the judgment debtors personal assets. (Must be served 21 days before the hearing.)
 If the judgment debtor fails to appear after notice of the hearing, the judgement debtor shall be subject to the civil contempt powers of the Court. (Ord, 333-A, 11-5-1998; Ord. 548, 5-13-1999)

Earnings Garnishment means the legal process through which a portion of the earnings of a debtor are required to be withheld by a third party for payment of a Court sanctioned judgment. (Must be served 21 days before the hearing.)

Wages Salary Commission Otherwise

Note: 20% is the maximum percentage of desposable earnings that can be garnished
 Presentation of a substantial hardship must be presented at the time of the hearing for a % reduction of the garnishment.

Motion for Execution: A judgment debtor shall file a written Motion with a concise statement of facts regarding the judgment and the judgment creditor's interest in seizing and executing upon the personal property to satisfy the judgment.

A Judgment which requires payment of money or the delivery of property may be enforced by an Order of Execution in the Court within ten years after judgment is entered.

Exemptions of a Judgment debtor can be found in Chapter 25 "Judgment Collection" packet which can be obtained from the Clerk of Court upon request.

Plaintiff _____

Date _____