

Rule 22 Trusteeship

Trusteeship Rules and Regulations

(ORC 2329.70 Eff. 8/26/82)

A. DEBTOR REQUIREMENTS

Debtor: Any person upon whom a **demand** has been made in accordance with ORC 2716.02 may apply to any Judge...of a Municipal Court within this state, in whose jurisdiction he resides, or, if he is not a resident of Ohio, in whose jurisdiction his place of employment is located.

1. **Debtor** must reside within the boundaries of the Berea Municipal Court: Berea, Brook Park, Middleburg Heights, Olmsted Falls, Olmsted Township, and Strongsville.
2. **Debtor** is not a resident of the State of Ohio *and* is employed within the boundaries of the Berea Municipal Court, as described in section A1.

B. APPLICATION FOR TRUSTEESHIP

If **Debtor** is qualified by residency or employment per sections A1 and A2, he/she *may apply for the appointment of a Trustee* to receive that portion of the personal earnings of the debtor that is not exempt from execution and such additional exemptions under ORC 2716.02 as follows:

1. Federal Income Tax
2. Ohio Income Tax
3. City Income Tax
4. Social Security
5. In addition, child support ordered by a Domestic Relations Court (ORC 2329.70) and Court Rule.

If Debtor is self-employed, a copy of the previous year's Federal Tax return *shall* be submitted with the application for Trusteeship and each year thereafter for review of the Judge and Trustee. Such person (Debtor) shall file with his application a full, accurate, and complete statement, under oath, of the names of his/her secured and unsecured creditors with liquidated claims, their addresses, and the amount due to each.

ORC 2329.70

If a debtor fails, through mistake or otherwise, to list a creditor, that creditor or debtor may apply to the Court, *with notice to the party*, to list such creditor(s) in the Trusteeship. Any person, who becomes a creditor after the appointment of a Trustee, may be listed in such Trusteeship and such creditor shall share in any distribution made by the Trustee *after* the next ensuing distribution.

C. CLERK OF COURTS SHALL BE TRUSTEE

Upon such application and filing, such Judge shall appoint a Trustee to distribute such funds to

the creditors of the debtor at the time and application and filing ..., the Judge in the Court in which such application is made shall designate the *Clerk of such Court* to act as Trustee and the Clerk shall serve *without* additional compensation and his official bond shall be construed as conditioned upon the fulfillment of the Trust, and no additional bond shall be required.

ORC 2329.70

D. TRUSTEESHIP STAYS PROCEEDINGS AGAINST DEBTOR'S PERSONAL EARNINGS

No *proceedings* in attachment, in Aid of Execution, or other action to subject the personal earnings of the debtor to payment of claims shall be brought or maintained by any creditor so long as at least the amount of personal earnings of such debtor not exempt from Execution, attachment, or proceedings in Aid of Execution are paid to the Trustee at *regular intervals* as filed by the ... Municipal Court Judge.

ORC 2329.70

This section *does not prohibit* creditors from recovering judgment against such *debtor or* prohibit levy, under a Writ of Attachment or Execution upon any other property which is not exempt from Execution (Bank Accounts, Personal Property, including homes and auto.)

ORC 2329.70

The maintaining of a proceedings in attachment, in Aid of Execution, or otherwise in violation of this section *shall be void* and may be prevented by Writ of Prohibition in addition to all remedies by law.

ORC 2329.70

E. JUDGE(S) SET RULES OF TRUSTEESHIP

Such Judge(s) (of the Berea Municipal Court) shall provide by Rule or otherwise for notice to creditors, the authentication and proof of claims, and time and manner of payment of the debtor, the distribution of funds, the bond of the Trustee, if required, and for all other matters necessary or proper to carry into effect the jurisdiction conferred by this section.

ORC 2329.70

F. TERMINATION OF TRUSTEESHIP

The Trusteeship shall terminate upon the failure of the debtor to make payments required by this section and in accordance with the rules established by the Municipal Judge, and all privileges in this section exempt from attachment, garnishment, proceedings in Aid in this section of Execution, or any other action to subject personal earnings of such debtor to payment of claims or judgments *shall terminate upon subject neglect*.

ORC 2329.70

If Trusteeship is dismissed for non-payment, as provided by this section, the Trusteeship *shall not be reinstated* and the debtor *shall not be* permitted to file a new Trusteeship for a period of six (6) months from the date of dismissal of the Trusteeship, unless, upon Motion supported by Affidavit, he proves to the satisfaction of the Court that failure to maintain the Trusteeship agreement was not due to willful neglect.

G. GENERAL RULES AND CONDITIONS ESTABLISHED BY COURT RULES

1. Applicant must reside in the jurisdiction of the Berea Municipal Court which includes Berea, Brook Park, Middleburg Heights, Olmsted Falls, Olmsted Township, and

Strongsville. If applicant is not a resident of the State of Ohio, he/she must be employed in the jurisdiction of the Berea Municipal Court.

2. Applicant must be employed or self-employed and provide proof with pay vouchers and/or Federal Income Tax statements as required by the Court or Trustee.
3. Applicant must have a "Notice of Court Action to Collect a Debt" dated within the part thirty (30) days.
4. A fee of \$50.00 is to be paid when application is filed.
5. Applicants must submit a complete list of creditors giving names, addresses, and amounts due. Accounts in the hands of collection agencies or attorney's secured or Unsecured, are to be so designated. Debts to the Federal Government (Income Tax) cannot be listed.
6. Obligations incurred after an application for Trusteeship is filed may not be added to a Trusteeship account. Any attachment or garnishment which has been filed before the Trusteeship was filed cannot be dismissed by the Court.
7. When the list of creditors includes obligations in the names of the applicant and spouse, the Trusteeship will be in the two names and both will sign the application form. If the applicant has any co-signers on a loan, the creditor can garnish the wages of the co-signer.
8. Payments from all wages the debtor receives are to be made in the Clerk of Courts office. Payments are to be in cash, money order, or certified check, to the Berea Municipal Court Trusteeship Division. They are payable within three (3) days from receipt of a paycheck. The initial payment is due the first day after the application is filed. Payments sent by mail are to be accompanied by the paycheck stub and a stamped, addressed envelope.
9. Payments are to be 20% of the applicant's disposable income. "Disposable Income" is gross pay less Social Security, Federal Income Tax, State Income Tax, City Income Tax and Child Support Payments paid to Domestic Relations Court. Payments are deposited in account for the debtor and distributions are made every three (3) months. Court fees are 2% of the payment due.
10. The only reason for missed payment is the absence of a paycheck from the employer.

If no pay is received due to illness or lay-off, the debtor must bring in a statement from his/her employer corresponding to the missed payment within three (3) days of the payment date.
11. It is the debtor's obligation to keep the Court informed of any change in address or employment within five (5) days. In the absence of a paycheck due to illness, lay-off, strike, or vacation, the Court should be notified. Participation in Trusteeship will protect *only* your wages from attachment. Civil action may be taken against other property you own.

12. Reasons for dismissal and termination of the Trusteeship are as follows:
- a. Failure to pay within three (3) days following receipt of a paycheck.
 - b. Failure to pay the amount due on all income.
 - c. Failure to pay as directed by the Judge's order (Journal Entry).
 - d. Giving any false statement at time of application or at any time during the active state of Trusteeship.
 - e. Change of residence outside the jurisdiction of the Court.

When payment for Trusteeship established by this Court is missed or tardy, a *First Notice* will be sent to the Debtor giving him/her fourteen (14) days to make up arrears or otherwise satisfy the Court.

On the *Second Occurrence* when payment is missed or tardy, a *Second Notice* will be sent to the Debtor requiring his/her presence before the Court, at which time he/she shall make up arrears or otherwise *occurrence* can or will result in dissolution/termination of the Trusteeship Agreement.

On the *Third and Final Occurrence* when payment is missed or tardy, a *Third and Final Notice* will be sent to the Debtor giving five (5) day notice of dissolution/termination of the Trusteeship.

When a Trusteeship is dissolved/terminated for failure to pay or failure to comply with the Trusteeship rules, a Debtor may not apply again for Trusteeship for a period of six (6) months unless upon Motion of the Court supported by affidavit, he/she proves to the satisfaction of the Court that failure to maintain the Trusteeship Agreement was not due to *willful neglect*.