

Attachments in Child Support Actions

Courts may use the legal process of attachment to separate property, whether real or personal and place it under the control of the court when the owner of the property fails to comply with his or her child support obligation. In some circumstances it may also be used to bring a person before the court, compel an appearance, or arrest a fund in the hands of a third person who may be liable to pay it over to the court.

Applicability

Most often, attachment is the process of placing property under the control of a court to assure that a debt obligation is paid. Attachment also can mean bringing a person into court in order to get control over property in the hands of a third party. Usually, an attachment is made against the house of the parent who owes child support. The fact that the parent declares the residence to be his homestead does not preclude the imposition of a lien on the property for child support, where it is shown that the parent had the ability to pay child support and wilfully refused or failed to do so.

Availability

Attachments are not limited to a parent's present interest in property. A court may order the attachment and sale of the party's interest in a contract that does not require the personal services of the parent. The court can attach royalties or annuity benefits payable to the parent under an existing contract. As a rule, pension payments and Social Security benefits may not be attached, but there are exceptions, and courts in rare circumstances have successfully attached such payments in order to pay past due child support.

Body Attachments

Some states permit attachment of the parent to compel payment of child support in situations where contempt may not be appropriate. A parent may have the ability to pay child support but is about to flee the state or country to avoid paying. In the states that permit the procedure, the parent would be liable for summary arrest and incarceration. It should be noted, however, that once a person is "attached" and brought into court, that person still has his constitutional right of due process and the use of an attorney, with the right to challenge whether the debt is owed and whether the parent has the ability to pay it.