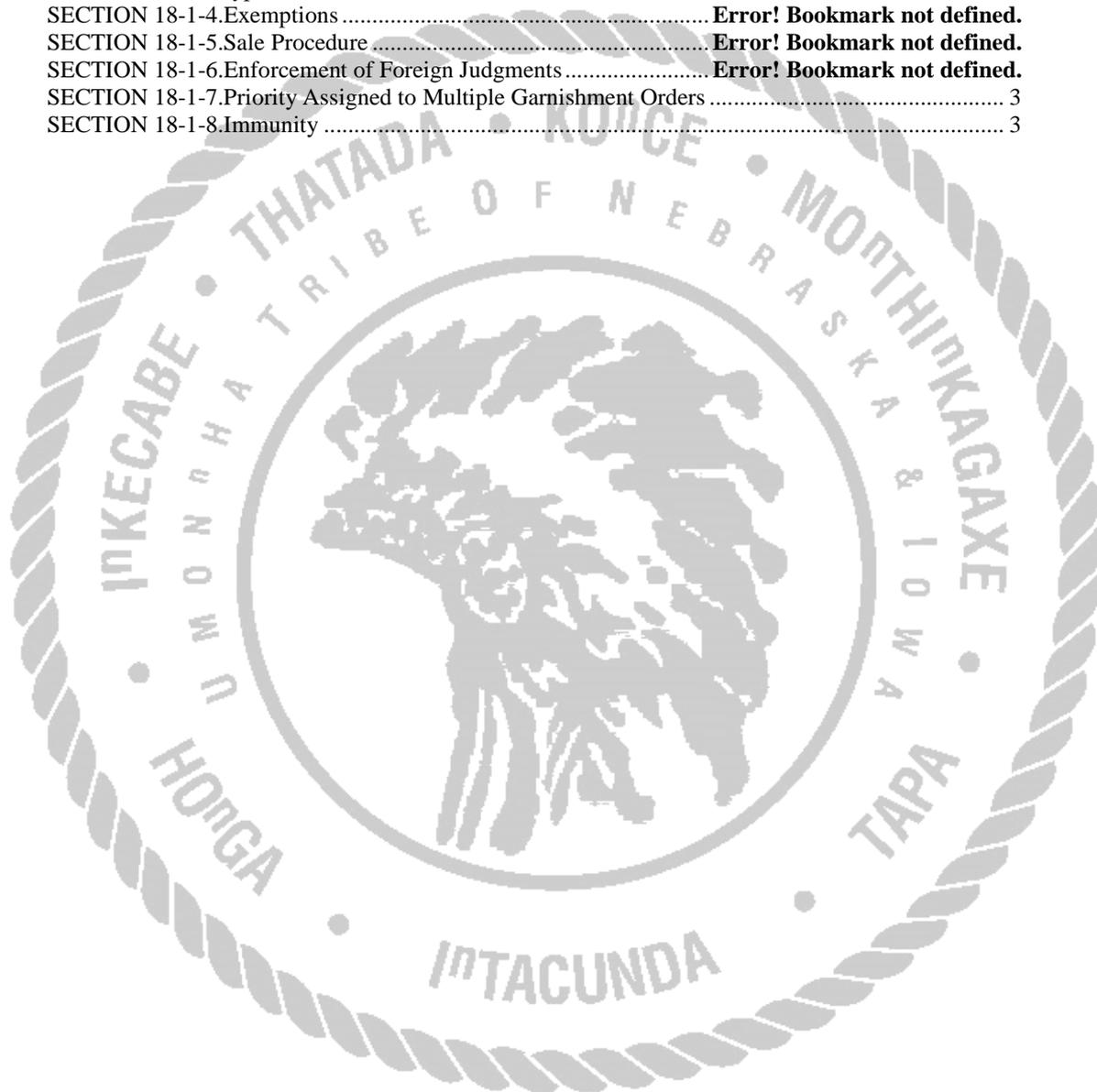


# OMAHA TRIBAL CODE (2013)

## TITLE 18. GARNISHMENT

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# OMAHA TRIBAL CODE (2013)

## TITLE 18. GARNISHMENT AND ENFORCEMENT OF JUDGMENTS

*[Note: Title 18 was repealed and replaced by Resolution No. 15-18 on October 14, 2014, which adopted new procedures and rules]*

### **18-1-1. Purposes.**

The general purpose of this section is to provide a fair and equitable means of collecting on debts, to protect the rights of creditors and debtors, and to better enable community members to secure credit by providing a process for creditors to collect on debts. The provisions of this section shall not limit the Court from applying applicable Tribal customs to resolving disputes.

### **18-1-2. Procedure (Generally).**

If a party fails to satisfy any money judgment of the Omaha Tribal Court, not less than 30 days after entry of the judgment the Court may issue an order allowing the judgment to be executed upon and satisfied out of property owned by the judgment debtor upon the filing of an application setting forth:

- (a) The date of entry of the judgment, the amount of the judgment, the amount paid on the judgment, the amount currently owing on the judgment including interest, the name of the Court, the case number, and the date of registration of the judgment if it is a foreign judgment;
- (b) The name of the requesting party and his or her address or the address of his or her attorney or authorized representative;
- (c) A statement of the type of execution sought, the name and address of the person on whom it is to be served, and a description of the property to be seized.
- (d) For garnishments, the requesting party shall name the garnishee. The requesting party shall serve the garnishee in the same manner as the summons and complaint or petition, and proof of service shall be filed with the Court.
- (e) When the Omaha Tribe of Nebraska is the garnishee, the Director of Human Resources shall be the agent for purposes of service of process.

### **18-1-3. Types of Execution.**

Court orders allowing execution of a judgment shall consist of two types:

- (a) Attachment shall be used to seize property in possession of a judgment debtor;
- (b) Garnishment shall be used to seize property of the judgment debtor that is in the hands of another person.

Orders of attachment or garnishment shall be served in the same manner as the summons and complaint or petition, and proof of service shall be filed with the Court.

### **18-1-4. Exemptions.**

In the execution of any judgment the following shall be exempt from execution to satisfy a judgment:

- (a) All wearing apparel of every person in the family but not to exceed \$500.00 value in furs, jewelry, beadwork, or personal ornaments for any one person;
- (b) Items of bona fide religious or cultural significance;
- (c) Fishing, hunting or farming equipment of reasonable value;
- (d) A minimum amount of tools, instruments, and materials sufficient to allow a judgment debtor to carry on his or her trade;
- (e) Provisions and fuel for the comfortable maintenance of the home for three months;
- (f) Land or interests in land held in trust or subject to restrictions on alienation imposed by the United States or other land which is the judgment debtor's principal residence;

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(g) Ninety percent of a judgment debtor's disposable wages (gross wages minus deductions required by law, but not including voluntary payroll deductions), salary, or other compensation regularly paid to a judgment debtor for personal services each pay period. This exemption, however, shall not apply to orders of child support issued in accordance with an Order from any Court of competent jurisdiction;

(h) An automobile of reasonable value necessary for personal or family use.

Provided, that none of the above property shall be exempt from execution for any judgment awarded because of the debtor's failure to pay all or part of the purchase price for that property, and, with the exception of Indian trust land, none of the above property shall be exempt from execution if it was specifically pledged as collateral or security to the person awarded the judgment.

Notwithstanding the foregoing, the judgment debtor (person owing) may defeat a garnishment by establishing by a preponderance of the evidence at a contested hearing that garnishment of any wages will impose a substantial hardship that will affect the health and welfare of the judgment debtor and his family or his dependents. If a garnishment is defeated by a judgment debtor, then the financial status of the judgment debtor will be reviewed every 30 days on request of the judgment creditor (person owed), to determine whether judgment debtor is able to pay the garnishment amount sought.

### **18-1-5. Sale Procedure.**

When property has been seized or otherwise delivered to the Court in execution of a judgment, the Court shall give the judgment debtor written notice that:

- (a) The property is in the possession of the Court pursuant to a Court order;
- (b) The property will be sold at public auction on a date specified in the notice and the proceeds applied to the judgment;
- (c) The judgment debtor has the right to contest the execution order by filing a written opposition with the Court and requesting a hearing;
- (d) At any time prior to the sale, the judgment debtor has the right to satisfy the judgment and obtain the return of the property.

### **18-1-6. Enforcement of Foreign Judgments.**

Execution on a judgment from a Court other than the Omaha Tribal Court shall be allowed in accordance with this code if it has been registered with the Court by filing a certified copy of the judgment with the Court Clerk, paying any necessary filing fee established by the Clerk, and serving a copy on the judgment debtor. Included with the certified copy of the judgment, a certified copy of proof of service and evidence of jurisdiction over the judgment debtor shall also be provided. Before giving effect to a foreign judgment the Court may conduct a preliminary inquiry regarding the validity of the foreign judgment.

### **18-1-7. Priority Assigned to Multiple Garnishment Orders.**

Where an employee is subject to multiple orders for garnishment the following descending priority shall be observed by the Omaha Tribal Court in giving effect to such orders:

- (a) Child support orders affecting Omaha Tribe of Nebraska children. When one or more children who are subject to a child support order are enrolled in the Omaha Tribe of Nebraska, or are demonstrated to be eligible for enrollment in the Omaha Tribe of Nebraska that child support order shall be given priority over any other garnishment.
- (b) Other child support orders. Any other child support order shall be given priority over competing garnishment and the orders within this subsection which are filed first with the Omaha Tribal Court shall be given priority over subsequently filed orders.

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(c) Other personal support orders. Other personal support orders shall be given priority over competing garnishment orders, and the orders within this subsection which are filed first with the Omaha Tribal Court shall be given priority over subsequently filed orders.

(d) All other garnishments. All other garnishments shall be given effect in the order that they are filed with the Omaha Tribal Court.

### **18-1-8. Immunity.**

The provisions of this section shall not be construed to waive the immunity of the Omaha Tribe of Nebraska, its Tribal Council, its agencies, enterprises, chartered organizations, corporations, or entities of any kind, and its officers, employees, agents, contractors and attorneys shall be immune from suit in the performance of their duties; except where the immunity of the Tribe or its officers and employees is expressly, specifically, and unequivocally waived by and in a Omaha Tribal or Federal statute, a duly executed contract approved by the Omaha Tribal Council, or a duly enacted ordinance or resolution of the Omaha Tribal Council.

