

Get Rid of your Child Support Headaches!

Mary Smith's divorce was final and she hoped her headaches were over. The court ordered her ex-husband to make monthly payments in support of their two children, and although the amount of support was not much, Mary expected the money would help her in paying for the children's food, clothing, and shelter. Unfortunately, Mary's headaches had just begun. When Mary's ex-husband did pay support, which was rare, it was always late, and never the full amount. As a result, Mary was forced to bear the responsibility of supporting their children alone. Does her story sound familiar?

Unfortunately, Mary's situation is all too common. Custodial parents throughout the nation are not receiving court ordered child support, and as a result, millions of children are not provided for in the manner they deserve. Moreover, custodial parents are routinely giving up in their quest to receive support, which is tragic, considering the enforcement methods available to them.

In this article, we will explore the various methods available in the collection of child support and discuss the importance of vigorously pursuing such matters.

First of all, custodial parents should know there are a wide variety of enforcement mechanisms provided by law to assist in the collection of child support. The following list constitutes only some of the tools that are available to custodial parents:

Wage Assignment: An earnings assignment order for support, commonly referred to as a "wage assignment," is available for enforcement of child and spousal support orders, and is probably the most effective and commonly used enforcement method. An earnings assignment order for support is binding on an employer of the obligor on whom it is served, regardless of whether the obligor was employed by that employer when the order was issued and regardless of whether the order includes identifying information about the employer. California Family Code, Section 5231.

Earnings assignment orders for support must require the obligor notify the obligee of any change of employment, and of the name and address of the new employer, within ten days after obtaining new employment. California Family Code, Section 5281.

Writ of Execution: A writ of execution is an order to a county's levying officer (i.e., its sheriff or marshal), or to a registered process server, to obtain satisfaction of a judgment for a judgment creditor. The writ may be executed by (1) seizing funds of the judgment debtor and delivering them to the judgment creditor, (2) seizing and delivering real or tangible personal property, or (3) seizing and selling real or tangible personal property and delivering the proceeds.

Judgment Lien on Real Property: A judgment lien on real property to enforce a money judgment may be created by recordation. The particular document to be recorded depends on the nature of the money judgment being enforced. When the underlying money judgment is an order for child, spousal, or family support payable in installments, the lien is usually created by recording an Abstract of Support Judgment. The judgment lien is simple and sometimes a very effective enforcement method that should not be

overlooked. The benefit from the lien is usually realized when the judgment debtor attempts (1) to sell real property in a county in which the document is recorded or (2) to obtain a loan to be secured by real property located in such a county. The prospective purchaser or lender will probably insist that any liens be paid off.

Contempt Proceedings: By statute, contempt proceedings are available to enforce any judgment or order made under the Family Code. If the contempt alleged is for failure to pay child, spousal, or family support, each month for which a payment has not been made in full may be alleged and punished as a separate count. The limitation period for such a failure is three years from the date the payment was due.

Deposit of Assets to Secure Child Support Payments: In an order or judgment requiring payment of child support, the court may also require, subject to certain restrictions, that the obligor pay up to one year's child support, to be known as the "child support security deposit." When making an order for payment of a child support security deposit the court must direct that the obligor deposit the amount in an interest-bearing account and subject to withdrawal only on court authorization. Furthermore, the court must order the obligor to supply evidence of the deposit.

Penalties for Unpaid Child Support: The California Family Code provides for substantial monetary penalties for unpaid child support. The penalties are intended to be applied in "egregious instances of noncompliance with child support orders."

Attorney's Fees

The California Family Code also provides that the court may order the non custodial parent to pay the custodial parent's attorney's fees for having to bring enforcement proceedings.

Don't Sit on your Rights to Collect!

One of the most important things a custodial parent should know is the serious risk in losing one's right to collect child support if enforcement proceedings are not pursued in a timely fashion. During the past six years, California courts have rendered numerous opinions which have applied the doctrine of laches as a valid defense to child and spousal support arrears and have precluded custodial parents from collecting where they have waited too long. (See *Marriage of Plescia* (1997) 59 CA4th 252.)

The doctrine of laches is an equitable defense that allows parents who have not paid child support to ask the court to preclude enforcement proceedings, since the custodial parent's delay was unfairly prejudicial.

Although the California Legislator recently passed law in an attempt to limit the doctrine of laches to welfare cases, many experts in the area of family law believe the courts of appeal will continue to uphold the doctrine of laches, as it is an inherent exercise of the court's equitable powers.

Consequently, it is paramount for custodial parents to enforce their rights to collect child support in a timely fashion. It is advisable for custodial parents who are having difficulty collecting child support to be proactive and take advantage of the available legal remedies.