

What Financial Institutions Need to Know about Maine Trustee Process

Trustee process is a form of pre-judgment remedy to secure a plaintiff's ability to collect on the eventual judgment, costs, and interest in litigation. (Me. R. Civ. P. 4B(a)). Under Maine law, through trustee process a plaintiff can seek to lien a defendant's assets early in the case, often when filing the complaint. (14 M.R.S. § 2601). Any entity holding assets belonging to the defendant is a "trustee" under the statute. Typically, trustee process is used to lien funds, including those in bank accounts, and personal property. Financial institutions are often trustees and should be aware of the process.

To commence trustee process, a plaintiff must request and receive a court order approving trustee process. The plaintiff then serves a "trustee summons" within 30 days of the order on the trustee. The service of the trustee summons "binds" all property in the name of the defendant that is in possession of the trustee. (14 M.R.S. § 2603). The trustee is obligated to then, in effect, freeze any assets owned by the persons named in the summons.

Trustees are also required to respond within 20 days after being served with the trustee summons. (Me. R. Civ. P. 4B). The response is a disclosure under oath and must include a statement of all assets the trustee is holding in the name of the defendant. (*Otis v. Springfield Fire & Marine Ins. Co.*, 122 Me. 239, 119 A. 612 (1923); 14 M.R.S.A. § 2706 (disclosure must be sworn to)). The response must include enough information to put the plaintiff on notice of any funds that are held by the trustee. (*R.C. Moore, Inc. v. Les-Care Kitchens, Inc.*, 2006 WL 2590064 *8 (Me. Super.)). The response should include any defenses that the trustee has to the trustee process, such as insufficient or untimely service of the trustee summons. (*R.C. Moore, Inc. v. Les-Care Kitchens, Inc.*, 931 A.2d 1081, 1085–1086, 2007 ME 138 ¶ 20–26).

It is important for the trustee to respond timely and respond fully to the trustee summons. If a trustee does not respond timely, the Trustee may be "defaulted," and as a result, liable to the extent that the trustee holds property of the defendant. (14 M.R.S. § 2614). Additionally, the trustee may be liable for costs arising in the action after the failure to respond. (14 M.R.S. § 2701). If a trustee responds timely, however, the trustee is entitled to its costs. (14 M.R.S. § 2902). Furthermore, a trustee who is not located in the county of the case may be entitled to legal fees, as well as reasonable compensation for its time and expenses in appearing and defending against the trustee summons. (14 M.R.S. § 2904).

The trustee process statute is technical and requires strict compliance to avoid the pitfalls. We recommend that financial institutions review, and update if necessary, their procedures for responding to trustee summonses to ensure compliance with the statute.

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