



## GARNISHMENT AND YOUR RIGHTS

Garnishment is when someone freezes money in your **bank account** or your **paycheck**. They cannot do this unless a court gave them a judgment against you or they served you with a lawsuit that you did not answer. You may not get a warning before this happens. In some cases your money **cannot** be kept by them. Money that cannot be kept is called “exempt”. You will have to fill out papers claiming that your money is exempt. Use this fact sheet to see if your money and property is exempt.

If your money is not exempt, try to work out a deal with the company or person that has a judgment against you. They might accept a payment plan, or even payment of less than the full amount. If you make a deal, be sure it is in writing and signed by both sides. Keep a copy of it.

A non-profit debt counseling agency like Consumer Credit Counseling can help. Call 1-(800) 388-2227 for a local office. **Watch Out** for companies that charge money to “repair” your credit. Many of these are rip-offs!



### CAN MY BENEFITS BE GARNISHED?

Usually, government assistance based on need cannot be garnished by creditors. Assistance based on need includes programs like:

- MFIP
- Emergency Assistance (EA)
- County Crisis funds
- Medical Assistance (MA)
- General Assistance (GA)
- General Assistance Medical Care (GAMC)
- MinnesotaCare
- Food Support (Food Stamps)
- Minnesota Supplemental Aid (MSA)
- SSI
- Energy Assistance
- Medicare part B premiums
- Medicare part D extra Help

**Note:** This list does not include all programs that are assistance based on need. Courts have also ruled that EITC (Earned Income Tax Credit) money is exempt from most garnishments. There are other programs that are based on need that may make it possible for you to claim an exemption. Such as programs like the School Lunch Program and Minnesota Family Planning Program. If you have questions about whether you qualify, call your local legal aid office.

Other programs like Social Security (Retirement, Survivor or Disability Insurance) and Veterans Benefits are also exempt from garnishment. If you are not sure if the benefits you get are exempt talk to a lawyer or call your local legal services office.

**BUT**, there are times that this money is NOT safe. Get advice from a lawyer if someone has threatened to take your benefits.

For example:

- Up to 15% of your social security benefits can be garnished to pay for government-related debts like child support, student loans and income taxes as long as you get a minimum of \$750 each month. You must get a warning from the U.S. Treasurer before this happens.
- Also, your benefits can be reduced or stopped if your county decides that you got benefits that you shouldn't have. See our fact sheet *MFIP Overpayments*.

## CAN THEY TAKE MONEY FROM MY BANK ACCOUNT?

Yes, unless the money is exempt. If your bank account is garnished, you won't be able to use your money in your account. It will be "frozen" while you claim your exemptions. You may not get a notice before this happens.

If the creditor got a judgment against you then they do not have to give you a notice before they garnish your account.

**The bank sends you a notice after the money is held.**

The notice tells you your rights about exemption. It will take time before your bank will release your funds.



If the creditor served you with a summons and complaint

that you did not answer, and has not filed the lawsuit yet, then they must give you a notice before they garnish your funds. If you get a notice before garnishment, you can claim your exemptions before the garnishment to try and avoid it. You might also be able to answer the lawsuit and explain why you don't owe the money. See our fact sheet *If You Are Sued*.

**If you have written checks or have automatic payments—they may bounce!!** Talk to the people you wrote checks to and tell them about the problem. If you have set up automatic payments, these will bounce also. Cancel your automatic payments! Talk to the bank manager about what is happening. They might agree to cancel overdraft charges.

- Money in your bank account is protected from **most** types of debts if your money is from:
  - Government assistance based on need and most other public benefits (see section above)
  - unemployment benefits
  - workers' compensation
  - (most) pensions
  - life insurance proceeds
  - veterans' benefits
  - the earnings of your minor child
  - any child support paid to you
  - insurance claims for exempt property
  - disability insurance benefits
- Courts in Minnesota have also ruled that EITC (Earned Income Tax Credit) money is exempt from most garnishments.
- Sometimes money that is usually exempt is **not protected if you owe** debts like:
  - child support
  - alimony
  - student loans or
  - taxes

- Gifts, and other peoples' money are **not protected** from garnishment when they are put in your bank account. **BUT**, if you have a **joint account**, the other person's money is protected if they do not owe the debt. Talk to a lawyer right away.
- Student loan money is protected but other kinds of loans might not be protected.
- Exempt wages only stay exempt for 20 or 60 days after you deposit them in the bank. See section below "Can They Take Money from my Paycheck?"
- If a bank or financial institution is trying to take money you owe out of another account you have with them call a lawyer right away.

### HOW DO I CLAIM A BANK ACCOUNT EXEMPTION?

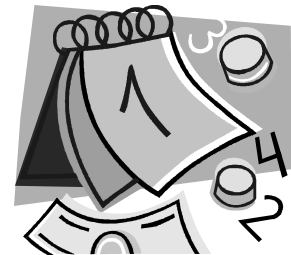
If the creditor gives you a notice that your funds are at risk of garnishment follow the instructions in the notice right away. If you have exempt income, contact the creditor and tell them why your money is exempt. Offer to send them proof that it is exempt.

If the creditor does not have to give you notice, you will not get any warning *before* your account is frozen. The bank must send you a written notice and exemption forms *after* the money in your account has been frozen. If your money is exempt (see above) fill out **BOTH** exemption notices. Give one copy to the person or company who is garnishing you and one copy to your **bank**. You must send a copy of your bank statements for the past 60 days to the creditor with your exemption claim. If your bank statement does not list where the money from a deposit comes from, you should also send deposit slips or other proof that the money came from an exempt source. If the creditor does not object to your claim in 6 business days, the bank should put the money back into your account. If the bank does not get your exemption notice within 14 days, it will continue to hold your money, and you will not be able to use it.

### CAN THEY TAKE MONEY OUT OF MY PAYCHECK?

They cannot take money from your paycheck if:

- You are getting or got government assistance based on need in the last 6 months (see section on benefits above)
- You were an inmate in jail or a correctional institution in the last 6 months.



These 2 exemptions protect your paycheck for **60 days** after you deposit it in your bank.

### I don't have those exemptions. How much can they take?

Most of your paycheck is protected - even if you are not exempt. Usually, your paycheck can only be garnished up to 25% of your after-tax wages as long as you still get a minimum of a \$290 per week.

- **ONLY 20 DAYS:** This "25% limit" also applies to paychecks deposited into your bank account – but only for 20 days. Example: if you deposit a \$1000 paycheck into your bank, \$250 can be garnished right away and the other \$750 could be garnished after 20 days.
- **BUT- if the garnishment is for child support**, then up to 65% of your wages can be withheld.
- **NOTE:** If you are an **independent contractor** or if you **own your business**, then these wage exemptions may not apply. You should talk to a lawyer to see if this applies to you

## HOW DO I CLAIM A PAYCHECK EXEMPTION?

You should get written notice at least 10 days before your paycheck gets garnished for the first time. Find out if your money is exempt (see above). If your wages are exempt, fill out the exemption notice that comes with the letter. If you can, hand-deliver 1 copy to the person or company who is garnishing you and 1 copy to your employer. Otherwise you can mail it. Do this as soon as possible. **If you do not do it within 10 days, you can still claim the exemption**, but it will take longer to stop the garnishment and get your money back.

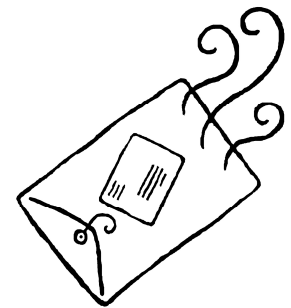
## WHAT HAPPENS AFTER I CLAIM AN EXEMPTION?

You can call the creditor and ask when they will tell your employer or bank to give your money back. The creditor might ask you for more information or proof, like benefits statements. You might get your money returned sooner if you send them the proof that they ask for. You might need to talk to a lawyer to help you prove your exemption claim.

## WHAT IF THE CREDITOR OBJECTS?

If the creditor wants more information or disagrees with your exemption claim, they must object and ask for a court hearing to see if your money is exempt. They will send you a form to tell you the reason for the objection and when the court hearing will be. If you have more proof you can send it again. It is possible to solve the issue before the hearing.

If you have to go to court but cannot go on the day that is set, you can ask the court to have the hearing on a different day - **you need to do this before the hearing**. If they object or refuse to release your money, remember to bring any documents that will help prove your exemption. If they froze the money in your bank account, be sure to bring bank statements for the last 60 days to the hearing. Also bring proof of where the money in your account comes from so you can prove exemptions.



**IMPORTANT: If you do not claim your exemptions or ask for a hearing on time, you can still do it later. You never lose your right to stop a garnishment or to get your exempt money back. Never rely on legal advice from a creditor or debt collector.**