



The Citation to Discover Assets: How Creditors Learn More Than You Want Them to Know

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A Citation to Discover Assets is a special legal tool creditors use to force consumers to pay the amount of a judgment against them.

[Note: To use this tool, the creditor must first get a judgment against you. What's more, you can stop the creditor from using this tool by filing for bankruptcy.]

You're Invited to Call or E-mail.

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tax liens or other financial problems, please send your e-mail today to

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After a creditor gets a judgment against you, the creditor asks the court to schedule a proceeding, called a "Citation To Discover Assets," which you attend. At this hearing, the creditor asks you questions about your income and assets. This is how the creditor identifies your employer, salary and wages. In addition, the creditor learns the location of your bank accounts and whether you have other income or property.

Then the creditor could begin the process to garnish your wages or bank account. Or, he could ask the judge for a turn-over order, which requires you to give the creditor some of your non-exempt income or property. Or, the court may order that you turn over to the Sheriff non-exempt assets -- other than cash or real estate -- for public sale. Your creditor receives the sale proceeds to pay off the judgment against you.

4 Key Points to Remember About the "Citation To Discover Assets"

1. The court requires you to appear. If you don't show up and answer questions, you could be arrested, fined, and sentenced to jail. If you go to jail, the court may require a large bond before authorizing your release. This money could be given to your creditor to apply to your debt, even if the bond money came from exempt assets.

2. You must tell the truth. You are under oath when responding to questions at this hearing. If you lie, you could be charged with perjury.

3. Your exempt assets are safe from seizure. The court's turn-over order applies only to assets or income that are not legally protected. You should tell the judge which property is exempt so he or she doesn't include it in the turn-over order. If you want certain property declared exempt, you must ask the judge to make it exempt. Then the court will determine the property's status.

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4. Don't agree to a court-ordered payment plan unless you're sure you can make all the payments. The creditor or his lawyer may try to get you to sign a court-ordered payment plan. This is different from a payment plan that you make only with the creditor. If the plan is court-ordered, you could be held in contempt of court and put in jail if you miss a payment. So don't agree to a court-ordered payment plan unless you know you can make all the payments on time.

Property Held by Third Parties

Third parties who possess some of your assets may also receive Citations to Discover Assets. They include, for instance, a bank that has money in your accounts or an insurance company that has not yet paid your claim. If a third party is served with a Citation, he must also appear in court.

If a third party receives a Citation from your creditor, you must receive a notice (1) telling you when to appear in court for the hearing, and (2) explaining your exemption rights and how to claim those rights at the hearing. The judge cannot direct a third party to turn over your property to a creditor unless the creditor proves in court that you were properly served with the Citation and received notice of your exemption rights.

After receiving a Citation, the third party must freeze all of your assets that are not legally exempt. The third party cannot release money to a creditor until it is served with a court order or turn-over order.

Whenever a third party puts a freeze on exempt assets -- or whenever you think exempt assets might get turned over to a creditor at a hearing -- you should go to court and declare your exemption rights.

Garnishing Your Wages

If you fail to pay the judgment, creditors can profit from another legal tool, the wage deduction proceeding, also called a wage garnishment. This is where the creditor tries to get your employer to deduct money from your paycheck and send it directly to the creditor.

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The Process Called Wage Deduction

When a creditor has a judgment against you, he can file a “Wage Deduction Affidavit” with the court clerk. In this affidavit, the creditor states that he believes your employer owes you wages. In addition, the creditor must certify that he sent you a “Wage Deduction Notice” before filing the affidavit, with your last known address appearing in the affidavit.

In addition, the creditor must also file with the court clerk and send to your employer written questions called interrogatories. These questions help the creditor learn how much money your employer owes you in a specific time period, and calculate the amount of non-exempt wages he can deduct. Your employer must answer these questions, file them with the court, and send a copy of the answers to your creditor and you.

When the creditor files the affidavit and interrogatories with the court clerk, the clerk issues a summons that is served on your employer. It tells your employer when to file answers to the interrogatories and the date for the court hearing. From then on, your employer must withhold the amount of non-exempt wages you’ve earned or that may come due up to the judgment amount. Then, at the next hearing, the court will decide whether the money held by your employer should be given to your creditor.

The Wage Deduction Notice

The law requires that the Wage Deduction Notice sent to you must in a specific format. The notice must tell you that a creditor has started a court proceeding to have your employer withhold your wages -- and the date and time your case will be heard in court. It must also explain the formula used to determine the amount of wages that can be deducted -- and the amount of wages that are protected. In addition, the notice explains how you can ask for a hearing to dispute the wage deduction.

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How Much Money Can Your Employer Withhold?

Your employer can withhold only part of your wages, after deductions for taxes and Social Security. He must pay you 45 times the state or federal minimum wage, whichever is greater. At \$8.00 per hour, the state minimum wage is higher than the federal minimum wage. As a result, you can take home at least \$360 per week in wages. No wages can be deducted if you take home less than \$360 per week. And if you take home more than \$360 per week, your employer can deduct whichever of the following amounts is less:

- (1) 15% of your weekly gross wages, or
- (2) the amount of your weekly take-home pay above \$360.00.

In addition, your employer may withhold a small fee for the company's time in deducting money from your wages.

Is Your Employer Deducting the Right Amount From Your Wages?

First, figure out how much money your employer takes from your weekly earnings. Specifically, check to see if your employer is taking more money than the law allows. If so, bring this to your employer's attention and ask that he deduct only the correct amount.

When your employer responds to the interrogatories (legal questions answered under oath), review his answers and see how much non-exempt wages he claims to have deducted. If he persists in deducting too much from your wages, then ask for a hearing so the court can determine the correct amount of your exempt and non-exempt wages. You'll find instructions about how to request a hearing on your Wage Deduction Notice.

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Employer Retaliation

By law, your employer cannot fire or suspend you because he is deducting money from your wages to pay a debt. However, this applies only to a single debt. If you have two or more creditors carrying out wage deduction actions through your employer, then the law no longer protects you from termination or suspension.

Garnishment of Non-Wages

When a creditor gets a court judgment against you, in addition to your wages, he can seize non-exempt money that belongs to you or is owed to you. In most cases, a non-wages garnishment seizes money from your bank account. However, the money can also come from an insurance company or anyone else who owes you money.

How Garnishment Works

First, the creditor must get a court judgment against you. Then the creditor files a sworn affidavit with the court clerk. In this affidavit, the creditor says he believes your bank or another person (called a garnishee) has your money or property -- or owes you money. Then the creditor files a "Garnishment Notice" and sends a copy to you. Last, the creditor files a set of written questions (called interrogatories) with the court clerk, which the garnishee must answer, file with the court, and send a copy to you. In the answers to the interrogatories, the creditor discovers how much non-exempt money or property the garnishee holds.

When the court clerk has all this information, the clerk gives the creditor a "Garnishment Summons" to serve on the garnishee. This summons tells the garnishee when to file his answer to the interrogatories and the date of the court hearing. Then the garnishee must freeze the amount of non-exempt money or property it holds up to the judgment amount, and follow any other court instructions. At the hearing, the court will decide whether the garnishee should turn over the money to the creditor.

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The Garnishment Notice

The notice the creditor sends to you must be in a specific form. It must identify the court case and tell you that the creditor is taking legal action to force your bank or other property holder to give it money from your account to satisfy the judgment. In addition, this notice must tell you the time and date of the court hearing. Also, the notice must tell you that the amount of money or property that may be garnished is limited by law. Plus, it must explain the amount of money that is exempt and protected from garnishment.

What's more, the notice must explain that you have the legal right to request a hearing to challenge the garnishment or to ask the court to affirm that some of your money or property is exempt. And last, the notice must tell you how to request that hearing.

How Much Money Can be Taken From Your Bank Account?

When the garnishee freezes money in your bank account, you cannot use this money to cover your checks. You must be extra careful not to bounce checks, since you can no longer spend this money. In fact, once your money is frozen, you should think of the money as not being in your account. Later, the court can order that those frozen funds be given to the creditor. To prevent your funds from being frozen, you should withdraw the money from your account before the bank receives the summons. To process your garnishment, the bank may charge you a small fee.

Make Sure the Bank is Freezing the Right Amount in Your Account

By law, the bank is allowed to freeze only funds that are non-exempt. But the bank may not know how much of the money in your account is exempt. So if your bank freezes any part of your account, make sure you tell the bank and the creditor if any of the frozen money is exempt.

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For example: The law allows you a “wildcard” exemption of \$4,000 in money or property of your choice. So, you can choose to have the court declare as exempt up to \$4,000 in the frozen account.

What’s more, most government benefits, such as Social Security, are exempt. So if all the money in your account is from exempt government funds, then your entire account is exempt.

If the bank will not unfreeze exempt funds, you may go to court and have the court order the bank to release the funds. The Garnishment Notice explains how to request a court hearing to have the judge declare your funds exempt.

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