



How Creditors Can Garnish Your Money

by

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If a creditor has filed a lawsuit against you and gone to court, the court may decide in the creditor's favor -- and you'll have a court judgment with your name on it. This amount could include the amount you owe, as well as attorneys' fees, court costs, and anything else that appears in the agreement you signed with the creditor.

If you fail to pay the judgment issued by the court, the creditor can take action to collect the amount you owe, as follows:

Wage Deduction Proceeding

... also known as a wage garnishment. This is when the creditor tries to get your employer to take part of your wages and send that amount to the creditor to apply against the judgment you owe.

This procedure begins when a creditor files a "Wage Deduction Affidavit" with the court clerk. In this affidavit, the creditor states that your employer pays you wages. Also, the creditor must certify that he mailed a "wage deduction notice" to your last known address before filing the affidavit with the court. The affidavit must include the address to which he sent the notice.

In addition, the creditor files a set of questions ("interrogatories") with the court clerk and sends them to your employer. These questions help the creditor learn how much your employer pays you in wages and how much of your non-exempt wages your employer can deduct and send to the creditor.

Your employer must file answers to these interrogatories with the court, and send a copy to both you and the creditor.

When the creditor's affidavit and interrogatories reach the court clerk, the clerk issues a summons that is served on your employer. This summons tells your employer when the court must receive the answers to the interrogatories and when the court will hear the matter.

After the matter is heard in court, your employer must still pay you your exempt wages. Also, your employer must set aside the amount ordered by the court, which is taken from your non-exempt wages.

The summons states the date on which the parties are to return to court. At that time, the court will decide whether the money being held by your employer should be turned over to the creditor.

If Your Employer Deducts From Your Wages

You need to determine how much money your employer deducts from your wages and whether the amount is more than your employer is legally permitted to withhold. If your employer is setting aside too much, you must insist that your employer take out only the amount allowed by law. When you receive a copy of your employer's answers to the interrogatories, you will see how much non-exempt wages your employer claims to have deducted.

If your employer keeps taking too much money from your wages, you should request a hearing to ask the court to determine the correct amount of your exempt wages.

Your Employer Cannot Retaliate

Your employer may not fire or suspend you because your wages have been garnished by a single creditor. However, if a second creditor garnishes your wages for a different debt, then you are not protected from your employer's actions.

Seizure of Money Other Than Wages

If a creditor has a judgment against you, it can take money that either belongs to you -- or money that is owed to you. This is usually done by seizing money from your bank account or taking money that is owed to you by an insurance company or another source.

How a Non-Wage Garnishment Works

After the creditor gets a judgment against you: The creditor can file an affidavit with the court clerk stating that your bank has money that belongs to you -- or another person has money that is owed to you. Also, the creditor files with the court clerk a Garnishment Notice, which is also mailed to you.

In addition, the creditor must file with the court written interrogatories that the bank or other third party must answer. This tells the creditor how much money the bank or person holds that can be garnished. The bank or third party must answer the interrogatories, file them with the court clerk, and then provide copies both to you and the creditor.

When the court clerk receives all three -- the affidavit, the Garnishment Notice, and the creditor's interrogatories -- the clerk serves a garnishment summons on the bank or third party. This tells the other party when it must file its answer to the interrogatories and when the court will hear the matter.

The court then orders the bank or other party to hold as much as two times the judgment amount of your non-exempt funds or property.

During the court hearing -- which is from 21 to 30 days after the court issues the summons -- the court decides whether the bank or third party must give the creditor your money or property.

The court will not enter a deduction order in the creditor's favor unless the creditor followed strict legal guidelines for mailing to you both a copy of the garnishment summons and garnishment notice.

When the bank or other third party receives the summons, it must freeze -- and not permit you to use -- non-exempt funds up to the judgment amount. At a future date, the court may order that those funds be turned over to the creditor. New federal regulations forbid banks from freezing the most recent two months of direct-deposited benefits that are exempt, including Social Security and Veteran's benefits.

If you think the bank might freeze your funds, you can prevent this by withdrawing the money in your account. If you wait to withdraw funds until you receive notice of the garnishment, it will be too late because the bank will have already been served with the summons.

If Your Bank Account Has Been Frozen

In all likelihood, the bank won't know if the funds it has frozen are exempt. So if the bank freezes some or all of your funds, you need to tell the bank and the creditor if any of those funds are exempt.

You have an automatic exemption of \$4,000 in cash or property, whichever you choose. Also, most government benefits are completely exempt.

You're Invited to Call or E-mail.

Even so, most banks will not release any funds -- except those in the previous two months of qualified benefits - - without a court order. As a result, you will need to get a court order to have access to your funds.

Rich Fonfrias of the Fonfrias Law Group can help you find the right solution to your money problems, including dealing with garnishment. Highly knowledgeable in all aspects of bankruptcy law and mortgage repair, let an experienced Chicago bankruptcy attorney help you navigate a path to financial health. Rich Fonfrias is one of Chicago's most respected financial rescue and bankruptcy lawyers, serving clients in Illinois, Florida and California, he offers a broad range of financial legal services, including bankruptcy repair, bankruptcy avoidance, loan modification services, financial rescue, Illinois credit repair, financial legal services, tax reduction and tax lien services.

You're Invited to Call or E-mail.

"If you have questions about bankruptcy, foreclosure, credit card debt, loan modifications,

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

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