



## **HOW TO SURVIVE GARNISHMENT**

Todd Murray  
The Todd Murray Law Firm, PLLC  
800 Washington Ave N  
Suite 704  
Minneapolis, MN 55401  
(612) 284-4141  
[todd@toddmurraylaw.com](mailto:todd@toddmurraylaw.com)

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## **How Garnishment Works**

**This guide only covers garnishments for credit cards, auto loans, and other consumer debts. The garnishment rules for child support, federal student loans, and taxes are different.**

Without question, garnishment is the most frustrating part of the entire debt collection process for people. If you're reading this guide, then you probably know that garnishment is the process where creditors involuntarily take your money—from either your bank account or paycheck—to pay off the debt that you owe. Although Minnesota law allows garnishment before the debt collector gets a court judgment, most garnishments happen after a judgment has been entered.

To garnish your bank account, a debt collector first sends the garnishment papers to the bank. The bank must seize all the money in your bank account on the day they process the garnishment. You won't get notice of the garnishment until after your money has been frozen, which unfortunately can result in bounced checks and overdraft fees.

To garnish your paycheck, a debt collector first sends papers—called a Notice of Intent to Garnish—to you. The debt collector must then wait 10 days before sending the garnishment papers to your employer. When your employer gets the garnishment papers, they must take 25% of your after-tax earnings for each pay period until the debt is paid off.

## **Some Money is Protected From Garnishment**

### *Bank Garnishments*

Minnesota law protects—or exempts—certain types of money from garnishment. This means that the debt collector can't keep these things if they garnish them from your account. Here's a list:

- Need-based government aid, including all of the following (this isn't a complete list. Almost any form of government aid that you receive based on your income is probably exempt):
  - Social Security
  - Supplemental Security Income (SSI)

- Energy Assistance (EA)
  - Medial Assistance (MA)
  - Minnesota Family Investment Program (MFIP)
  - Emergency Assistance and Emergency General Assistance (EA & EGA)
  - Work First Program
  - General Assistance Medical Care (GAMC)
  - Minnesota Supplemental Assistance (MSA)
  - Minnesota Care
  - Food Stamps
  - Medicare Part B premiums and Part D extra help
  - County Crisis funds
  - Some courts have ruled that Earned Income Tax Benefits (EITC) money is exempt
- 75% of your after-tax earnings after you deposit your paycheck in your bank account. But there is a 20 day time limit for this exemption.
  - 100% of your after-tax earnings after you deposit your paycheck in your bank account if: (a) you receive need-based aid; (b) if you have received need based aid in the last 6 months; or (c) if you were in jail in the last 6 months. But there is a 60 day time limit for this exemption.
  - Money that you receive as child support
  - Unemployment benefits
  - Workers' Compensation
  - Disability
  - Veteran's Benefits
  - Most retirement pensions (currently up to about \$35,000 in value, anything more than that is not exempt)
  - Money from some federal student loans

And while it's not technically an exemption, under current Minnesota law a debt collector can't take money that doesn't belong to the debtor from a joint account.

### *Wage Garnishments*

A debt collector can only take 25% of your after-tax earnings through a wage garnishment. If you make only the federal minimum wage (or less) your wages are completely exempt from garnishment. And if you receive any form of need-based aid—such as those described above—your wages are totally exempt from

garnishment. Minnesota allows this exemption if you currently receive need-based aid, or if you've received any need-based aid in the last 6 months. And if your wages are being garnished by more than one creditor, the total that can be taken is still 25%. So if one creditor is already getting 25% of your wages, another creditor can't then take another 25%.

## **How to Claim an Exemption**

### *For a bank garnishment*

For a bank garnishment, you won't get notice until 5 days after the bank freezes your money. At that time, you'll be mailed a form to claim any exemptions on. The form was recently changed to make it easier to fill out. All you do is write your exemptions in the appropriate place on the form. There's no deadline for claiming an exemption, but you should act fast so that you get your money back as soon as possible.

Once you've finished filling out the form, sign it and mail it to the creditor's lawyer. You'll also need to send proof that the money that was frozen came from an exempt source. **In other words, it's not enough to show the debt collector that you receive exempt money, you also have to prove how much of the money that was frozen in your account was from that exempt source.** Collection lawyers call this "tracing". Here's an example of what I mean:

*(1) Let's say your social security check for \$750 was deposited in your bank account on April 3, 2010. And on April 6, 2010, you deposited a check for \$250, which was a gift from a relative for your birthday. Then, on April 9, 2010 your bank account was garnished and the bank freezes the \$1,000 that's in there.*

So how much of the \$1,000 that was frozen is exempt? Just the \$750 from your social security check. The \$250 gift from your relative is not exempt. That's why it's not enough to just send the collection lawyer a copy of your social security benefit statement. Your social security benefit statement alone would not have proved how much money was exempt. Only your bank statement, which would show the 2 deposits can "trace" how much money is exempt. Let's try another example:

*(2) On March 1, 2010, you deposited your paycheck for \$1,000 in your bank account. On March 5, 2010, you deposited the \$100 that you made from a recent garage sale. And on March 7, 2010, you deposited the \$50 you made at your weekly poker game. On March 10, 2010, your bank account was garnished and the bank freezes the \$1,150 that's in your account.*

So how much is exempt? Well, 75% of your after-tax earnings are exempt for 20 days after you deposit them in your bank account, so you can protect \$750 from your paycheck. The remaining \$250 has to go toward paying the debt. So does the \$100 from your garage sale and your \$50 poker winnings. So you get to keep \$750, and the creditor keeps \$400. Again, if you would have just sent the creditor's lawyer your pay stub to prove your exemption, it wouldn't have been enough. Only your bank statements can “trace” how much money is exempt.

So sending the debt collector copies of your last 60 days of bank statements, along with your benefit statements or pay stubs, will usually get the job done. But if your bank statements don't clearly show where the deposits came from, you may need to send them copies of your deposit slips too.

### *For a wage garnishment*

You'll get notice of a wage garnishment, along with an exemption form, at least 10 days before the garnishment starts. All you need to do is fill out the exemption form. Make sure to do it before the 10 days is up. Like the bank garnishment exemption form, it was recently changed to make it easier to fill out.

Once you've finished filling out the form, sign it and mail it to the creditor's lawyer. You should also send proof of your exemption—for example, your benefit notice—with the exemption form. You don't need bank statements for “tracing” for a wage garnishment.

### **What if the Creditor “Objects” to Your Exemption?**

If you don't send the creditor's lawyer sufficient proof of your exemption, they may send you an “objection” to your exemption. If this happens, you should immediately schedule a court hearing in front of a judge to determine whether your money is exempt. Call the courthouse in the county that your case is in. Ask for the civil court administrator's office. Tell the court clerk that you want to schedule a garnishment exemption hearing. The court administrator should be able to help you set up the hearing and properly notify the creditor's lawyer of when it is.

On the day of your hearing, be sure to bring proof of your exemption with you. If you're challenging a bank garnishment, make sure to bring the last 60 days of your bank statements, as well as proof of your exemption (benefit notice, pay stubs, etc.). If your bank statements don't clearly show where the deposits came from, you'll

need to bring copies of your deposit slips too. If you're dealing with a wage garnishment, your benefit notice is probably all that you need. **If you don't bring these things with you, it will take longer for the court to decide, which keeps you from your money even longer. Some judges will even just deny your exemption claim.**

Once you get in front of the judge, explain why the money is exempt and give the judge all the documents that you brought with you.

### **A Useful Tip for People Receiving Exempt Money**

If you receive exempt money, it may be easier to “trace” it during the exemption process if you open a separate bank account and only put your exempt money in there. That way, when you're trying to prove your exemption, it's a lot easier to separate the exempt money from the non-exempt money.

### **What to Do if You Can't Claim an Exemption**

Unfortunately, not everyone dealing with garnishment can rightfully claim an exemption. If that's you, here are some suggestions for how to best deal with this tough situation:

- **If the garnishment happens after a judgment is entered against you—and most are—then consider a motion to vacate the judgment.** This will give you a chance to defend yourself. You'll need to bring a motion in front of the court and prove the following four things:

(1) *A legitimate defense to the collection lawsuit.* You must show the court that you have a defense to the debt collector's case. If the debt collector is a debt buyer, you can usually argue that they can't prove that they are the rightful owner of your account. You may also be able to argue that their evidence is insufficient, that the statute of limitations has passed, or that the judgment balance was too high.

(2) *A good reason for not answering the complaint.* There are many reasons for not answering the complaint—you just have to convince the judge that yours is a good one. Perhaps you were out of town when the lawsuit was served and you didn't come back until after the time to answer passed. Or maybe they left the lawsuit with someone at your house, but that person never gave it to you. Some

judges will even accept the argument that you didn't understand what the lawsuit was and didn't know that you had to respond to it.

(3) *That the judgment was entered less than a year ago.* To get a judgment vacated, you have to show that you acted quickly once the judgment was entered. Courts have ruled that you have one year from the date that the judgment was entered to bring a motion to vacate.

(4) *That the debt collector will not suffer any prejudice if the judgment is vacated.* In most cases, the only prejudice that the debt collector will suffer if a judgment is vacated is having to take the time and spend the money to litigate the case again. But Minnesota courts have been very clear in ruling that additional time and expense are not sufficient prejudice to prevent a judgment from being vacated.

Also, if you weren't properly served with the debt collector's lawsuit, the judgment should be void. In Minnesota, a lawsuit begins upon service. So if there wasn't service, there wasn't a lawsuit. And if there wasn't a valid lawsuit, there can't be a judgment. If you aren't sure whether you should bring a motion to vacate the judgment, talk to a consumer lawyer.

- **Negotiate a settlement or payment plan.** If a motion to vacate the judgment isn't appropriate in your situation, your options are pretty limited because the time to dispute the debt has passed. In many cases, your best choice may be to call the creditor's lawyer and arrange for payment. That might be the only way to avoid the stress and inconvenience of garnishments. Good deals are hard to come by after judgment because you've lost most of your leverage. But if you can demonstrate a significant financial hardship, or have a lump sum of cash available, you may be able to get the creditor to knock a decent chunk of the balance off. You might also consider talking to friends and family to see if they'll help you pay off the debt.

To negotiate with a debt collector in this situation, you'll need patience and persistence. Remember, it's a negotiation—their first offer probably isn't the lowest amount that they'll actually take. And if the person you're dealing with is rude or condescending, ask to talk to someone else. Keep doing this until you get to someone that's polite and professional. Then, keep working with this person and see if you can arrange something you can afford. Be sure to get any agreements in writing. Also confirm that they won't garnish you as long as you make the payments you agree on.

- **If all else fails, bankruptcy may be your best option.** If the judgment is for so much money that you realistically can't pay it back, or if you have multiple judgments, your best choice might be bankruptcy. Consider talking to a consumer bankruptcy lawyer to figure out whether bankruptcy is right for you.
- **Remember that the Fair Debt Collection Practices Act (FDCPA) applies even after the judgment is entered.** So keep a record of all the conversations you have with the debt collector and save all letters and voice mails from them. And if you think that a debt collector has violated the FDCPA, talk to a consumer lawyer about the situation. If you haven't already, feel free to download the free FDCPA Basics handout and Collection Call Log forms on my website.