

AFTER THE CREDITOR WINS THE LAWSUIT: WHAT ARE YOUR RIGHTS?

WHAT HAPPENS WHEN A CREDITOR SUES ME?

If someone thinks you owe them money they can "go to court" to collect it. The creditor starts the lawsuit by filing papers to explain why he thinks you owe him money. You then file a written explanation of why you think you do *not* owe the money. The court will hold a hearing to hear the evidence from each side, and decide whether you owe the money or not.

If the creditor wins, the court order will state the exact amount that you owe. This is called the "judgment".

WHAT IF I DON'T PAY THE JUDGMENT?

The creditor can go back to the court for two ways to force you to pay.

- (1) He can ask the court to have some of your property sold by the sheriff to pay the debt; or
- (2) He can ask the court to have a part of your wages "attached" (or "garnished") to pay the debt.

WHAT IF MY FAMILY NEEDS OUR MONEY OR PROPERTY TO SURVIVE?

There are two protections or "exemptions" that you have to preserve the property or wages that your family needs to live.

The first is called the **Homestead Exemption**. It applies only to land (or a house) that you own and live in. This right allows you to protect \$5,000 worth of the land.

If your house is worth less than \$5,000 then the creditor cannot get any part of the house. If your house is worth more than \$5,000 it can be sold but you will be given the first \$5,000. The creditor would get any amount over \$5,000 up to the total amount owed. Any money left over after the creditor is paid will go to you.

The second protection is called the **Personal Property Exemption**. If you are the head of a household this protection will let you keep \$1,000 in "personal property" exempt from any legal proceeding for collection.

"Personal property" covers everything like your clothes, your car, your TV, your radio or stereo, your kitchen pots and pans, your furniture, your tools, and so on. Measure their value by the price you think you could get for them if you sold them at a yard sale or by advertising in the newspaper.

You can keep \$1,000 worth of personal property exempt from any collection proceeding. If you have less than \$1,000 worth of property you can protect all of it. If you have more than \$1,000 of property you must identify what property you want to protect, and the rest will be available for court-ordered sale.

It is very important to remember that "personal property" also includes your wages in any given pay period. Earned wages, even if they haven't been paid to you yet, are personal property that you can protect with this Exemption.

HOW DOES WAGE GARNISHMENT WORK?

After the creditor files a paper with the court to show you have not paid the judgment, the court orders your employer to take some money out of your paycheck until the debt is paid.

You can claim any wages due to you as personal property to be protected under the Personal Property Exemption. You would need to file a new Personal Property Exemption form for every pay period.

ARE THERE ANY OTHER PROTECTIONS AGAINST WAGE GARNISHMENTS?

If you are not a Head of Household, or if you do not file a Personal Property Exemption covering your wages, or if you have more wages than protected by the Personal Property Exemption, there are some other restrictions on how much a creditor can take from your wages.

First, no more than 20% of your *net* earnings can be taken. "Net earnings" means wages left *after* taxes and other required deductions, *and* means only the wages not protected by the Personal Property Exemption.

Second, you must have at least \$154.50 left per week *after* the wage garnishment (the rule is "30 times the federal minimum wage"). If you make less than this amount per week, there is nothing the creditor can take. If you make more than this amount per week, the creditor can take only the amount above \$154.50 per week, but still not more than 20% of the total net wages.

HOW DO I CLAIM THESE PROTECTIONS?

The Clerk of the Court where the collection action is being done should have forms to fill out for each of the protections we have described. You will have to ask for the particular form that you need. Ask for their help in filling out the form if you need it.

If the Clerk of the Court does not have the forms, you should immediately write to the Administrator of the Supreme Court to get the forms you need. You should explain that your court did not have them, and that you need them immediately to protect your rights. You should send a copy of this letter to the judge of the court where your case is taking place.

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