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SOCIETY

GARNISHMENT

A person or business you owe money to is called a creditor. If a creditor wants to force you to pay a debt, they must first get a court judgment against you, the debtor. Many people feel that having a judgment against them is the worst possible thing. It is not good to have judgments against you, as they have a negative effect on your credit rating. A judgment simply is a piece of paper at the local courthouse that says you owe someone a certain sum of money. This allows the creditor to use legal actions to collect the judgment, including garnishing your wages and bank account.

WHAT IS A GARNISHMENT?

A garnishment means that a creditor who has already gotten a court judgment is trying to get money that belongs to you but is currently in someone else's possession. The most common types of garnishments are of wages you have earned but that have not been paid to you, and money that is held in your bank accounts.

WHAT TYPES OF MONEY CANNOT BE GARNISHED?

Most government benefits may be garnished only for child and spousal support and for debts owed to the government. The types of Government benefits that cannot be garnished by regular creditors include:

- Social Security,
- Supplemental Security Income (SSI),
- Temporary Assistance for Needy Families (TANF),
- Black Lung benefits,
- Unemployment Compensation,

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- Workers' Compensation, and
- Veterans' Benefits.

Child Support, Spousal Support, and most pensions and retirement accounts, also cannot be garnished to pay a judgment. SSI cannot be garnished for anything – not even for child support owed.

If you owe a debt to the government, in most situations they do not need to sue you or get a judgment before withholding some of your benefits to pay off the debt. This is called “administrative offset.” However, they must leave you with at least \$750 per month in benefits.

Bank accounts containing only government benefits, child support, spousal support or pension funds may not be garnished (except as above) so long as the bank account does not contain money from any other source. If you are receiving any of these benefits, you should not mix them (commingle) with other funds in your account that could be garnished. For example, do not mix Social Security money with part-time wages in the same account.

Even if your bank account contains only exempt funds, a garnishment summons could temporarily freeze your bank account. This could result in unintentional “bounced” checks, along with the usual fees that go along with that. If you do not object to the garnishment in time by filing a Garnishment Exemption Claim Form in the same court that issued the Garnishment Order, you could lose exempt benefits in a bank account. If you successfully claim your exemptions, the bank should “unfreeze” your account. Also, banks usually charge customers a fee if the account was frozen, typically about \$100. If you claimed your exemptions and the account was freed up, you should ask the bank to refund any garnishment fees they charged against your account. If a garnishment summons freezes your bank account, get legal help right away.

If you have federal benefits, such as Social Security or SSI, directly deposited into your bank account, the bank is required to protect up to two months' worth of such deposits from garnishment and can't freeze those funds. The bank must make those two months' worth of federal benefits fully available to you for writing checks, making withdrawals, etc. If you have funds in your bank account in addition to two months' worth of directly deposited federal benefits, then you will need to file a claim of exemptions in court to get those additional funds released to you. Also, the bank is not allowed to charge any garnishment fees against the protected federal benefits. However, if it's the federal government or a state child support agency that's trying to garnish your bank account, then these rules on protecting your direct-deposited federal benefits do not apply.

Persons who apply for federal benefits (such as Social Security, SSI, and veterans benefits) on or after May 1, 2011, must have those benefits directly deposited to a bank account or applied to a Direct Express debit card. Those who were already receiving benefits by paper checks prior to May 1, 2011, will begin having their benefits directly deposited or they will have to use a Direct Express debit card by March 1, 2013. (There are some exceptions to this requirement.) The

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Direct Express card is a debit card offered by the Social Security Administration. It is used just like a regular bank debit card. Your monthly benefits will be automatically deposited to your Direct Express card account. This avoids the potential problem of anyone trying to garnish or otherwise take control of your bank account. To find out more, or to apply for the Direct Express card, you can call 877-212-9991, or go to www.USDirectExpress.com.

Prepaid debit cards are also offered through the Department of Child Support Enforcement for child support you receive, and through the Virginia Employment Commission for Unemployment Compensation benefits. You should consider using these debit cards to avoid having the funds frozen in your bank account.

HOW MUCH OF MY PAYCHECK CAN BE GARNISHED?

A garnishment normally cannot be more than 25% of your disposable earnings, and you must be able to bring home at least \$290 per week (as of July 24, 2009). For garnishment purposes, disposable earnings is defined as your gross wages minus amounts that must be withheld by law, such as federal and state taxes. That does not include optional deductions from wages, such as insurance or retirement savings. If you support a dependent minor child living with you and your total household monthly income is no more than \$1,750.00, you can claim an additional exemption of \$34 per week for one child, \$52 per week for two children, and \$66 per week for three or more children. You will need to file an affidavit and two forms of proof that you are entitled to these additional exemptions.

People who are not employed or who take home less than \$290 weekly cannot successfully be garnished. Also, an employer cannot fire you for being garnished *the first time* it happens.

HOW MUCH OF MY WAGES OR SOCIAL SECURITY BENEFITS CAN BE GARNISHED FOR BACK CHILD SUPPORT?

- Sixty percent (60%) of your wages after taxes or Social Security benefits can be garnished for child support. If you are supporting any other child or a spouse, that amount is lowered to fifty percent (50%) of your wages after taxes of Social Security benefits.
- If your payments are more than twelve weeks behind, sixty-five percent (65%) of your wages after taxes or Social Security benefits can be garnished. That amount is lowered to fifty-five percent (55%) if you are supporting any other child or spouse.
- SSI benefits can never be garnished for child support, or any other debts.

WHAT HAPPENS WHEN I GET GARNISHED?

If your wages are garnished, you and your employer will receive a Garnishment Summons. A garnishment is good for 30, 60, 90 or 180 days, at the choice of the creditor. The garnished

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money is under the control of the court until the garnishment period is over. The garnishment period ends at what is called the “return date,” which can be found on the summons.

A creditor may follow the same steps to garnish a debtor’s bank account. The summons is sent to your bank instead of your employer. This has the effect of freezing your bank account until the “return date.” (See above for exceptions for directly deposited federal benefits.) Meanwhile, as explained above, any checks you have written that are still outstanding, will not be honored and will be returned as unpaid. This means you will likely be charged additional fees for the unpaid (bounced) checks.

WHAT IS THE RETURN DATE?

All of the money collected during the garnishment period is sent to the court before the return date, which is shown on the upper right corner of the summons. This date is important - if you are going to protect your garnished earnings, you must do something before the return date. The garnishment ends on the return date. If not enough money has been taken out to pay off the judgment, then the creditor can pay another court fee and start another garnishment.

HOW DO I OBJECT TO A GARNISHMENT?

You do this by filing a Garnishment Exemption Claim Form with the court that issued the garnishment before the return date. You may be able to do this by yourself, but it is not recommended. You may lose income or property if you don’t know the law. You should get legal help. You must get a court hearing on or before the return date to object to the garnishment. At the hearing, you have a chance to explain why the money cannot be garnished. If the judge agrees, the money is released to you.

WHAT IF I’M BEING GARNISHED BUT I’VE ALREADY PAID OFF THE JUDGMENT THAT I’M BEING GARNISHED ON?

If the court records show the judgment has been fully paid off, then you should not be garnished any further.

Paying off the judgment in full, including interest and any fees or costs ordered by the court, is called “satisfaction of the judgment.” The judgment creditor is required to notify the clerk of court within 30 days after the debtor has fully paid off (satisfied) the judgment. The clerk will then mark it on the docket as satisfied. If the creditor fails to notify the clerk within 30 days after satisfaction, then the debtor may make a motion to the court to have the judgment marked as satisfied. If the debtor can prove it was paid off in full, then the judge will order that the record show the judgment as being satisfied. The judge may also require the creditor to pay the debtor for the costs of making this motion.

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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