

DEBT: GARNISHMENT & EXECUTION

How Does a Creditor Collect a Debt?

Sometimes, the person or company to whom you owe money will go to court. They will ask for a court order to make you pay your debt. For this to happen, they must first file a lawsuit.

There are several steps after that filing. But if the creditor wins, they can force you to settle up through either of two primary ways of collecting that “judgment debt.”

One of the primary ways is called **execution**. Generally, this is when the creditor gets court permission to take and sell your property. The money from that sale is used to pay your debt.

The other main way a creditor can compel you to pay is called a garnishment.

What is Garnishment?

This is one way the creditor can collect what you owe by taking money directly from your employer or your bank account or from another financial institution. The creditor gets this done by asking a judge to issue a “writ of garnishment.” Before this can happen, however, the creditor must file a lawsuit.

What Do I Do if I’ve Been Sued?

Do not ignore the lawsuit. Ignoring a lawsuit will not make it go away. If you do not respond in a certain amount of time, you will automatically lose the lawsuit because the judge will make a “default” judgment. If this has happened and your wages or account have been garnished, it is probably too late to fight the lawsuit. **The time to fight a lawsuit is when you are served.**

What Happens if I Did Not Respond in Time or if I Lose?

When your creditor gets a judgment against you, it can last for 10 years. The judgment may be renewed for additional 10-year periods. In addition, if the

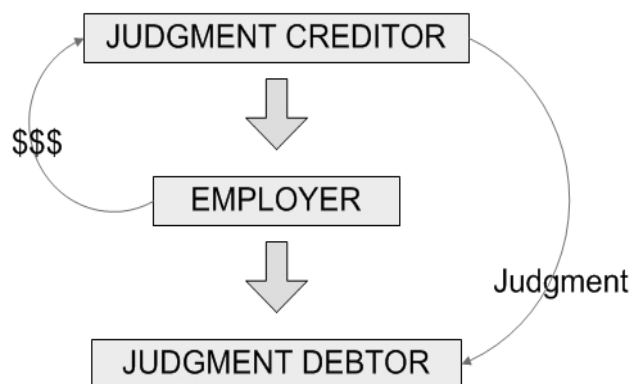
debt was related to a contract, a judgment may have an interest rate of 10% or more per year.

After the judgment is entered with the court, you have 45 days to file a “schedule of property” with the court. This is a list of all of your property and income.

You may also file a list with a court that details any wages or assets that you claim are exempt from garnishment. (See Below for Exemptions) If you do not include a list of your exemptions within 20 days, that property or income could be garnished. If you seek exemptions, the court may hold a hearing to determine whether they qualify for protection.

Once it has been determined what the creditor can garnish, the creditor will serve your employer or bank with a “writ of garnishment.” This orders your employer or bank to withhold money it would normally give you or keep in your account and use that money to pay the creditor what you owe. The creditor is required to mail you a copy of the writ.

The following diagram shows a garnishment situation where the defendant (the debtor) owes the plaintiff (the creditor) money. A writ of garnishment has been put on the debtor’s wages, so part of the wages go directly to the judgment creditor.



How Long Does a Garnishment Last?

Wage garnishments will continue until the debt is fully paid or until the job ends. Garnishments on bank or other financial accounts should last from the time the bank or other financial institution receives the writ of garnishment to the time they file an accurate response to the writ.

Can I be Fired Because of a Garnishment?

Yes. But federal law does not allow you to be fired if the only reason is the garnishment and if you have not been garnished for more than one judgment within the 12 months prior to being fired.

How Much Can They Take?

It depends. For example, a garnishment may take all the money in a savings or checking account with your name on it, even if this causes checks to bounce.

But federal and Arkansas state law allow you to exempt certain items from garnishments and executions. The following exemptions are complicated. You should consult an attorney to see if you qualify.

Property Exempt from Execution

- **Home:** Under state law, the homestead of the resident who is married or the head of a family is not subject to a judgment lien or an execution sale. There are some exceptions to this rule. Some examples of when the homestead exemption **does not** apply are:
 - Purchase-money mortgages.
 - Specific liens.
 - Laborers' and mechanics' liens.

How much of the property is exempt depends on its value and whether it is rural or urban. Contact an attorney for details.

- **Personal Property:** If you owe money as a result of a judgment on a contract (credit card, lease, auto purchase, etc.), you may claim a portion of your property as exempt from the debt-collection process. Your clothing and wedding ring are automatically exempt. Also, if you are married or head of

household, you may claim \$500 of your personal property to be exempt. The exemption is only \$200 if you are neither married nor head of household. To claim this personal property exemption, you must list all of your property. You must then select which items are exempt. Any items you list and do not select as exempt could be sold by your creditor to pay on the judgment.

- **Other Benefits:** Federal or state law generally exempts the following items from garnishment and/or execution:
 - Social Security and SSI benefits.
 - Some veteran's benefits.
 - Federal Civil Service Disability.
 - Transitional Employment Assistance (TEA).
 - Unemployment compensation.
 - Workers' compensation benefits.
 - State police and teachers' retirement benefits.
 - Health, life, accident and disability insurance proceeds.
 - Annuity contracts.

If you put any of these benefits into a bank account, you will probably need to file a "claim of exemption." You will need to prove how much of the bank balance is made up of the exempt source of income. You especially need to do this if one or more non-exempt sources of income have gone into the bank account.

Exempting Wages

Both federal and state laws offer certain exemptions for wages. Under state law, the first \$25 of weekly, net wages is exempt. Also, you may claim 60 days' worth of wages if your total exemption does not exceed the personal property exemption amount listed above. (That's \$500 if you are married or head of household — otherwise, it is \$200).

Debtors usually take advantage of the federal wage exemptions rather than the state exemptions. That's because under federal law, you can usually keep more of your wages. The system is designed so an employee takes home at least a minimum wage from

his check. How much you are allowed to keep depends on how often you are paid and what your “disposable earnings” are.

“Disposable earnings” are what is left to you after your employer withholds money for federal and state income and payroll taxes. It does **not** include deductions for family insurance coverage, credit union payments, or contributions to a pension plan or IRA, etc.

Federal law limits how much of your disposable earnings can be garnished. In most cases, the maximum amount that may be garnished is the lesser of: 1) 25% of your “disposable earnings” or 2) the amount by which disposable earnings exceed 30 times the federal minimum hourly wage for each week covered in the pay period.

Disposable earnings can be entirely exempt if they fall below certain amounts. See the following examples.

[The following computations are based on the federal minimum wage of \$7.25/hr, which took effect on July 24, 2009. Note: the federal minimum wage does not apply to all jobs.]

Weekly

If you are paid every week and your disposable earnings are \$215.50 or less, none of your wages may be garnished. They are completely exempt. ($\$7.25 \times 30 = \215.50).

Biweekly

If you are paid every other week, the first \$435 of your disposable wages are exempt. ($\$7.25 \times 60 = \435)

Semimonthly

If you are paid twice a month, the first \$471.25 of your disposable wages are exempt. ($\$7.25 \times 65 = \471.25)

Monthly

If you are paid monthly, the first \$942.50 of your disposable wages are exempt. ($\$7.25 \times 130 = \942.50)

The Child Support Exception

If you are supporting a spouse or dependent child (in addition to a child or ex-spouse you are court-ordered to support), the maximum amount of your disposable earnings that can be garnished is either **50%** or **55%**. Which percentage is subject to garnishment depends on how far behind you are in paying court-ordered support. If you do not have a second family, the maximum amount of your disposable earnings that can be garnished increases to **60%** or **65%**.

Support garnishments may also take 50%-65% of sources like workers’ compensation and SS Benefits.

In Arkansas, court-ordered family support and dependent health care coverage have special priorities. If your wages are being garnished because of court-ordered child or spousal support, or for dependent health care coverage, the ordinary creditor may not be able to garnish any of your wages. The ordinary creditor may only get a portion of your wages if the court-ordered support and dependant health coverage takes up less than 25% of your disposable income or the amount shown in the chart to the left, whichever is less.

How Do I Claim Exemptions?

It depends. Different rules apply to garnishments and executions. The process also varies depending on whether you are claiming state or federal exemptions.

Exemptions in Execution Cases

A creditor cannot get a writ of execution until 10 days after the debt judgment is entered. After that happens, you must then file a **schedule of all of your property** and the property you want to exempt. You have 20 days to file this after you get the writ of execution. Do not ignore this deadline.

If you fail to file your schedule of property and exemptions within 20 days, you automatically lose your right to the personal property exemptions. The only exception is that even if you miss the deadline, you must later file a **homestead exemption**.

Exemptions in Wage Garnishments

If you want to challenge the amount of wages being withheld from your paycheck, you will need to file a “claim exemption” in the court which issued the writ of garnishment. This filing must state the reason for your claim. The claim can be based on federal law or Arkansas law, or both. However, if possible, it is best to consult an attorney in deciding which law or laws to use.

Exemptions in Account Garnishments

Likewise, if you want to claim all or part of the money in your bank account as exempt from garnishment, you should file a “claim exemption” in the court which issued the writ of garnishment. As in the case of wage garnishment exemptions, you must state your reasons.

After filing the list, you should mail copies of it to your creditor, the bank or other financial institution which holds the funds, and to the court which issued the writ of garnishment. If you have recent bank records showing that the deposits in your account are from exempt sources, it generally helps to attach copies of these records. This is not required. But if you do it, be sure to mark out your account numbers and other identifying information.

The creditor has 5 days to request a hearing on your claimed exemptions. If there is a hearing, it would be wise to take the original bank statements. It would be even better to get an appropriate bank representative to go to testify at the hearing about your deposit history. If the bank representative will not go to the hearing voluntarily, a subpoena will help get them to court. You may need to get an attorney to help you properly issue and serve the subpoena along with the appropriate witness fee.

If the creditor does not seek a hearing, the court should order your exempt funds be released to you.

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