



Property Protected from Garnishment Fact Sheet

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:

- 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 or execution:

- Social Security (SS) and Supplemental Security Income benefits
- some veterans' benefits
- Federal Civil Service Disability
- Transitional Employment Assistance
- 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 is \$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 is 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 the following: (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 per hour, 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.

Biweekly

If you are paid every other week, the first \$435 of your disposable wages are exempt.

Semimonthly

If you are paid twice a month, the first \$471.25 of your disposable wages are exempt.

Monthly

If you are paid monthly, the first \$942.50 of your disposable wages are exempt.

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 court-ordered support and dependent health coverage take up less than 25% of your disposable income, or the amount shown above, whichever is less.

How Do You 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.

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, Arkansas law, or both. However, if possible, it is best to consult an attorney in deciding which law or laws to use.

This fact sheet is a collaboration of the Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc. These nonprofit organizations provide free legal assistance to eligible Arkansans who meet income, asset, and other guidelines. Legal assistance may also include advice and counsel, brief services, or full representation depending on the situation. For more information about civil legal aid in Arkansas, please visit arlegalservices.org. For information specific to Legal Aid of Arkansas, Inc., visit arlegalaid.org. Apply for services online or by calling 1-800-9-LAW-AID (1-800-952-9243).

The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

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