

Garnishment



The Office of the
Minnesota Attorney General
helping people afford their lives and live with dignity, safety, and respect

What is Garnishment?

Garnishment is a legal process by which a person to whom you owe money and who has started a lawsuit against you seeks to obtain money from your bank account or paycheck.

When is Garnishment Possible?

Before a creditor can start to garnish your wages or bank account, it must first have started a lawsuit to collect money that it claims you owe. If the creditor obtains a judgment against you—regardless of whether it's a judgment after a hearing or trial or a default judgment—Minnesota law allows the creditor to begin the garnishment process. (For more information on how to respond to any lawsuit that is started against you, please refer to the Attorney General publication, *Answering a Lawsuit*.) Minnesota law also allows a creditor to start the garnishment process without obtaining a judgment if you are served with a lawsuit that you don't answer in a certain amount of time, or if the creditor demonstrates to the court that you intend to try to put your money out of reach of your creditors.

How is Garnishment Started?

To begin the garnishment process, a creditor sends a "Garnishment Summons" to your bank or employer (known as the "Garnishee"). Creditors can garnish both wages and bank accounts. The process for garnishing wages differs from the process for garnishing bank accounts. Both processes are described in more detail below.

Garnishing Your Wages

A creditor that seeks to garnish your wages must first send you a "Notice of Intent to Garnish Earnings" before your wages are garnished. If you do not object within ten days, your wages can be garnished. If you are eligible for and wish to claim an "exemption" from garnishment, it is important that you complete and return the necessary paperwork, which can be submitted anytime during the garnishment.

How much of your wages can be garnished?

Creditors generally cannot garnish more than 25 percent of your "disposable" wages. "Disposable" wages are the earnings that remain after deducting all withholdings required by law, or any of your disposable wages if you make less than \$380 per week. These limits do not apply to judgments for child support.

When are your wages exempt from garnishment?

The wages of people who receive certain types of government assistance are exempt from garnishment if the person fills out an exemption form. The Notice of Intent to Garnish Earnings should contain a list of categories that make your wages exempt from garnishment. In general, if you have received government assistance based on need within the past six months, then creditors cannot garnish your wages for two months after the date you last received the assistance. "Assistance based on need" includes assistance from government programs such as:

- Minnesota Family Investment Program
- Diversionary Work Program
- Medical Assistance
- General Assistance
- General Assistance Medical Care
- Emergency General Assistance
- Minnesota Supplemental Aid
- MSA Emergency Assistance
- Supplemental Security Income
- Energy Assistance and
- Emergency Assistance.

An exemption does not apply automatically; rather, to qualify for an exemption, you must complete the appropriate paperwork.

What paperwork must I complete to show that my wages are exempt from garnishment?

To claim that your wages are exempt from garnishment, you must promptly return to the creditor's attorney the "Debtor's Exemption Claim Notice" that came with the Notice of Intent to Garnish Earnings. You must include a copy of your last 60 days of bank statements with this paperwork. Calling the creditor is not sufficient to qualify you for an exemption; rather, you must complete the necessary paperwork. If you do not return the exemption notice and bank statements to the creditor's attorney within 10 days of receiving notice of the intent to garnish your wages, the creditor can begin to garnish money from your wages, and can continue to do so for up to 70 days.

If your earnings are garnished after you claim an exemption, you may petition the court for a determination of your right to claim an exemption. If a court finds that the creditor disregarded your claim of exemption in bad faith, you will be entitled to costs, reasonable attorneys' fees, damages, and an amount not to exceed \$100. If a creditor disagrees with your claim of exemption, however, the creditor can also petition the court for a determination of your exemption, and, if the court finds that you claimed an exemption in bad faith, you will be assessed costs and reasonable attorneys' fees, plus an amount not to exceed \$100.

Garnishing Your Bank Account

A creditor starts the garnishment of your bank account by serving the bank with a "Garnishment Summons." The bank will then freeze a sufficient amount of money in your account to pay the debt to the creditor. If you are eligible for and wish to claim an exemption, it is important that you complete and return the necessary paperwork on time.

What can I expect if my bank account is garnished?

Within two days of receiving the Garnishment Summons, the bank should send you a garnishment notice, instructions and two copies of an "Exemption Form." You will not receive notice of the garnishment until after your funds are frozen. You will not have access to your funds while they are frozen. This may mean that your checks may bounce, and you may incur overdraft charges during this time.

When is my bank account exempt from garnishment?

Some money in your bank account may be exempt from garnishment. The Exemption Form will list the categories that may make your bank account exempt from garnishment. For example, a creditor generally cannot garnish any of the following:

- Government assistance based on need, including, but not limited to, medical assistance, Minnesota family investment program, diversionary work program, general assistance medical care, emergency general assistance, Minnesota supplemental aid, Food Support, energy assistance, fuel assistance, Medicare part B premium payments, Medicare part D extra help, general assistance, supplemental security Income, and MinnesotaCare;
- Social Security benefits;
- Unemployment benefits, workers' compensation or veterans' benefits;
- An accident, disability, or retirement pension or annuity;
- Life insurance proceeds;
- Earnings of your minor child;
- Money from a claim for damage or destruction of exempt property;
- A homestead or the proceeds from the sale of a homestead, or a mobile home used as your home;
- Household furniture, appliances, radios, and televisions up to a total current value of \$10,350;
- One motor vehicle worth less than \$4,600 after deducting any security interest;
- Farm machinery used by an individual principally engaged in farming up to \$13,000; and
- Tools, machines or office furniture used in your business or trade up to \$11,500.

What paperwork must I complete to show that my bank account is exempt from garnishment?

To claim that your bank account is exempt from garnishment, you must promptly return to the creditor's attorney the Exemption Form. This is the form your bank sent to you when it received the Garnishment Summons from the creditor. You must include copies of your bank statements for the last 60 days. It may also be helpful if you include documents (i.e. benefit letters, copies of benefit cards, etc.) to show why your funds are exempt. If you don't complete and return the exemption paperwork within 14 days from the date the bank mailed the exemption notice to you, the bank may turn over your frozen funds to the creditor. Please note that if you are eligible for and want to claim an exemption calling the creditor is not good enough; rather, you must complete and return the required paperwork.

What happens if I claim an exemption?

If you claim an exemption, the bank will "unfreeze" your funds and release them to you in six days unless the creditor objects to your exemption claim.

What if the creditor objects to my exemption claim?

If the creditor objects to your exemption claim, it must send you a written objection, along with a form entitled "Notice of Objection and Notice of Hearing." This notice will contain a time and date for you to appear at a court hearing. The date cannot be sooner than five days or later than seven days from the date of the creditor's objection. You may request a different hearing date if you want. To request a new hearing date, you must contact the creditor and the court before the date of your hearing. The new date must be within seven days of the original hearing date.

The court hearing is your opportunity to show the court why your bank account is exempt from garnishment. You should bring to the court hearing all the documents you have to support your claim to an exemption. You can ask the judge to order the creditor to pay you \$100 if you believe the creditor did not have good cause to object to your exemption claim. The court must issue its decision within three days of the hearing.

Special Rules for Federal Benefits

Under federal law, banks are generally prohibited from freezing a bank account and charging a garnishment fee if: (1) the debtor receives Social Security, Supplemental Security Income, Veteran's Pension, Federal Railroad Retirement, Civil Service Retirement, or Federal Employee Retirement System benefits; (2) such benefits are directly-deposited into the debtor's bank account; (3) the debtor does not transfer benefits to a different bank account; and (4) the debtor's account balance is less than twice the monthly benefit. The law only applies to funds that were deposited within the two months preceding the garnishment order.

Vacating Court Judgments

If a creditor serves you with a lawsuit, you must serve an "Answer" in a timely fashion if you wish to contest it. If you don't serve an Answer on time, the creditor may obtain a judgment against you. For more information on this process, see the Attorney General publication, *Answering a Lawsuit*. Once a judgment is entered, the only way to reverse it is for the judge to "vacate" the judgment. To request that a judgment be vacated, you must submit the request to the court that entered the judgment. A default judgment may generally only be vacated by bringing a motion to the court and proving any of the following things: (1) excusable neglect, (2) fraud, (3) the judgment is void, (4) enforcement of the judgment would be unjust, and (5) any other reason to justify relief from the judgment, which includes improper service of the creditor's lawsuit. A request to vacate a judgment must generally be submitted to the court within a year of the judgment being entered. It is ultimately up to the judge to decide whether to vacate a default judgment. If you believe that a judgment has been wrongfully entered against you and wish to have it vacated, it is generally best if you can obtain the assistance of an attorney.

Hiring an Attorney

The legal process can be complex for those without legal training. The Attorney General's Office cannot provide you with legal advice. If you need legal advice, you may wish to hire an attorney. For more information, please refer to the Attorney General publication, *Hiring an Attorney*. Some people may qualify for free legal services from a Legal Aid attorney if they meet certain income and assets requirements. Additional information about the court process for people who cannot afford an attorney is available on the court system website at www.mncourts.gov/selfhelp/.

Federal Debts and Child Support Orders

This flyer is intended to provide basic information about garnishments under Minnesota law. Please note that garnishment orders obtained by the United States or state child support agencies are not covered by exemption regulations.