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## **How a Creditor Can Collect a Judgment**

A person or business you owe money to is called a creditor. If a creditor wants to force you to pay a debt, they first must ask the court for a judgment. Many people feel that having a judgment against them is the worst possible thing. 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. However, the creditor first must get a judgment. A creditor with a judgment is called a “judgment-creditor.”

### **How does a judgment-creditor collect a judgment?**

A judgment-creditor may ask the court for these things to help collect a judgment.

- Summons to answer debtor interrogatories.
- Garnishment of your income.
- Levy (or attachment) to sell your personal property.
- Docketing the judgment.
- Creditor’s Bill in Equity to sell your real property.
- In certain cases, suspension of your driver’s license.

You will not be arrested if you do not pay your debts, bills, or judgments. Not paying your debts, bills or judgments is not a crime.

### **What is a summons to answer debtor interrogatories?**

A summons to answer debtor interrogatories requires that you come to a court hearing at a certain date, time and place. The hearing allows the judgment-creditor to ask you questions (interrogatories) about your income and property. You are under oath when you answer these questions. When you go to court, you should do these things.

- Answer all questions truthfully.
- Do not volunteer information, but do answer the questions are you asked.
- Take nothing of value with you. No wallet. No cash. No watch. No rings. No jewelry. No car. No car keys. Nothing of value.
- If you get government benefits, bring with you a paper which shows that. Give the paper to the judgment-creditor. Be sure to keep a copy for yourself.
- If you have government benefits in a bank account, bring with you a paper which shows that. Give the paper to the judgment-creditor. Be sure to keep a copy for yourself.

If you don't appear, the court can issue a "Rule to Show Cause" against you. This requires you to come to another court hearing and explain why you didn't come on the summons to answer interrogatories. If you didn't have a good reason for missing court, you can be jailed. The court also may issue a Capias to have you arrested. (The arrest and/or jailing is because you failed come to court, not because you failed to pay the judgment.) A judgment-creditor can summons you to court to answer debtor interrogatories only once every six months.

### **What is a garnishment?**

Garnishment means that wages, bank accounts, and other money payable to you gets paid to the judgment-creditor instead.

Government benefits can't be garnished. This includes Social Security, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Black Lung benefits, unemployment compensation, workers' compensation, and Veterans' benefits. These benefits also can't be garnished if you keep them separate from any other money you have (for example, in a separate bank account).

However, a garnishment summons could temporarily freeze your bank account. If you don't object in time by filing a garnishment exemption claim, you could lose exempt benefits in a bank account. If a garnishment summons freezes your bank account, get legal help right away.

Effective May 1, 2011, a bank that receives a garnishment summons first must determine if the United States, or a State child support enforcement agency, had the summons issued. If so, the bank follows its usual procedures for handling the summons.

If not, the bank must review the account history for the prior two months (called the "look back period") to see whether one or more exempt federal benefit payments were directly deposited to the account. Exempt federal benefits includes Social Security, SSI, Veterans Affairs (VA), Railroad Retirement, Railroad unemployment insurance and federal pension (OPM) benefits.

The bank must allow you to access to an amount (called the "protected amount") equal to the smaller of the following:

- The sum of exempt federal benefits directly deposited to the account during the look back period, or,
- The balance in the account on the date of the account review.

In addition, the bank must notify you that they have received a garnishment summons. The notice must briefly explain what a garnishment is and must also include other information about your rights.

For an account containing a protected amount, the bank may not collect a garnishment fee from the protected amount. The bank may only collect a garnishment from funds in excess of the protected amount.

Pensions can't be garnished. These benefits also can't be garnished if you keep them separate from any other money you have (for example, in a separate bank account).

Again, a garnishment summons could temporarily freeze your bank account. If you don't object in time by filing a garnishment exemption claim, you could lose exempt benefits in a bank account. If a garnishment summons freezes your bank account, get legal help right away.

Wages can't be garnished unless gross wages minus amounts that must be withheld by law are at least \$290.00 per week. (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.) Amounts that must be withheld by law include federal and state taxes. They don't include optional deductions from wages. A judgment-creditor may garnish the smaller of the following amounts.

- The amount by which gross wages minus amounts that must be withheld by law exceed \$290.00 per week.
- 25% of gross wages minus amounts that must be withheld by law.

Child support can't be garnished. Child support legally is the property of your child, and is not your property. Child support can't be taken to pay your judgment.

If you get garnished, you and your employer (or you and your bank) will receive a Garnishment Summons. Your employer can't fire you the first time your wages are garnished. A garnishment is good for 30, 60, 90 or 180 days, at the choice of the judgment-creditor. The garnished 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." This gives you a chance to object and claim that the money can't be garnished. You do this by filing a Garnishment Exemption Claim Form with the court that issued the garnishment. 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 can't be garnished. If the Judge agrees, the money is released to you.

### **What is a levy (or attachment)?**

A levy is when a Sheriff or Deputy comes to your home and makes a list of property that can be sold to pay your judgment. A judgment-creditor can levy on only some of your personal property. A levy can't be placed on the following items, which are exempt (free) from levy.

- Up to \$5,000 worth of household goods.
- Up to \$1,000 worth of clothing.
- Up to \$3,000 worth of a firearm.
- Medically prescribed health aids.
- Up to \$10,000 worth of tools and equipment you need for work or school.
- Up to \$6,000 “equity” value in a motor vehicle. “Equity” means the fair market value minus the amount you still owe on the vehicle.
- The portion of an income tax refund due to the Earned Income Tax Credit (EITC).
- Child support and spousal support, whether paid or unpaid.
- Up to \$5,000 worth of additional property (up to \$10,000 for a married couple, and up to \$10,000 for an individual 65 years of age or older) plus \$500 for each dependent, if you list it in a Homestead Deed filed with your local Circuit Court.

A levy can't be placed on property that you don't own. If a levy is placed on your property, the judgment-creditor can ask the Sheriff to take it and sell it. You then would receive a notice of sale. If a levy is placed on exempt property, you should object right away.

You do this by filing a Motion to Quash Levy with the court that issued the levy. You may be able to do this by yourself, but it is not recommended. You may lose property if you don't know the law. You should get legal help. You should get a court hearing as soon as possible to object to the levy. At the hearing, you have a chance to explain why the levy isn't proper. If the Judge agrees, the levy is released.

### **What is docketing of the judgment?**

Docketing the judgment is when the judgment-creditor records the judgment in any Circuit Court in Virginia. This puts a lien (or a claim) on any real property (house or land) you may own in that county or city. This alone does not mean that your real property will be sold to pay the judgment. It does mean that you can't sell or give away your real property, and turn over a clear title to the real property to someone else, without paying the judgment.

In Virginia, a judgment is good for 20 years. During that 20 year period, the judgment can be renewed for another 20 years. This means a judgment can stay on record and be good for up to 40 years. Very few judgments actually are collected by forcing a sale of a debtor's house. Far more often, the judgment gets paid at the time the house is sold by the debtor's own choice.

### **What is a creditor's Bill in Equity?**

A creditor's Bill in Equity is a second and separate lawsuit, which must be filed in Circuit Court. The lawsuit asks for an order to sell your real property (house or land) to pay the judgment. As with the first lawsuit that got the judgment, the creditor properly must file the lawsuit, serve the court papers, and get an order for the sale.

Even if a judgment-creditor gets an order for the sale and your house or land is sold, if there is any mortgage, it gets paid first. If you have up to \$5,000 in equity in your house or land

and list it in a Homestead Deed filed with the Circuit Court, you get paid before the judgment-creditor. For these and other reasons, a creditor's Bill in Equity seldom is used.

**When can my driver's license be suspended?**

If your judgment was based on damages due to a motor vehicle accident, the Division of Motor Vehicles (DMV) may suspend your driver's license until the judgment is satisfied. To satisfy the judgment you either must pay the judgment or make payment arrangements with the judgment-creditor.

**If I have a judgment against me, should I give away my property?**

No. This is called a "fraudulent conveyance." A judgment-creditor has up to one year to file a lawsuit to put the property back in your name, and then try to use that property to pay the judgment.