



# CENTRAL VIRGINIA LEGAL AID SOCIETY

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## 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 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.”

### What is a garnishment?

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

### What types of money can't be garnished?

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 \$380.00 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 \$380.00 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.

### **What happens when I get garnished?**

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.

### **How do I object to a garnishment?**

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.

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