



## Garnishment and Your Rights

Garnishment is when someone freezes money in your **bank account** or your **paycheck** to get money the courts say you owe to them. They can't do this unless a court gives them a judgment against you or they served you with a lawsuit that you did not answer. You may not get a warning before the garnishment happens.

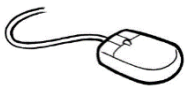
Sometimes, your money is protected – this is called “exempt” or an “exemption.” This fact sheet can help you learn if your money and property is exempt.

There are 2 exemptions that are automatic.

- Your employer can't garnish money from your paycheck if you earn less than \$290 a week. If you earn more than \$290 a week, at least 75% of your earnings after taxes are automatically protected.
- Your bank account can't be garnished if you have automatic deposits of Social Security (RSDI), SSI or other Federal exempt benefits and your account has less than 2 months' worth of social security benefits.



The other exemptions in this fact sheet are **not** automatic. You have to send an “Exemption Claim” to protect your money. The form for this will be mailed to you. You can also [get one online](#). Go to: [www.mncourts.gov](http://www.mncourts.gov)



- Click on *Get Forms* on the menu
- In the list click on *Judgment Enforcement*
- Click on *Exemption*
- In the list of Exemption Forms click on *Exemption Notice*

If your money is not exempt, try to work out a deal with the company or person that has a judgment against you. They might be okay with a payment plan, or even a final payment of less than the full amount. If you make a deal, put it in writing and signed by both sides. Keep a copy.

A non-profit debt counseling agency can help. Call the National Foundation for Credit Counseling (NFCC) at 1-(800) 388-2227 for a local office. **Watch Out** for companies that charge money to “repair” your credit or tell you to stop paying. Many of these are scams!

## Can my benefits be garnished?

Usually, government assistance based on need can't be garnished by creditors. Assistance based on need includes programs like:

- MN Family Investment Program (MFIP)
- Emergency Assistance (EA)
- County Crisis funds
- Medical Assistance (MA)
- General Assistance (GA)
- MinnesotaCare
- SNAP (Food Support/Stamps)
- Minnesota Supplemental Aid (MSA)
- SSI
- Energy Assistance
- Medicare part B premiums
- Medicare part D extra Help

**Note:** This list does not include all programs that are assistance based on need. Courts have also ruled that EITC (Earned Income Tax Credit) money is exempt from most garnishments.

There are other programs based on need that may make it possible for you to claim an exemption. Examples of this include the School Lunch Program and Minnesota Family Planning Program.

If you have questions about your exemption, call your local legal aid office.

Programs like Social Security (Retirement, Survivor or Disability Insurance) and Veterans Benefits are also exempt from garnishment. This money is automatically protected when you have less than 2 months' of benefits in your account. If you have more than 2 months worth, the extra can be frozen – it is still exempt but you have to claim the exemption to get it unfrozen. If you are not sure if your benefits are exempt talk to a lawyer or call your local legal services office.

BUT, there are times that this money is NOT safe. Get advice from a lawyer if someone has threatened to take your benefits.

For example:

- Social security benefits can be garnished to pay for debts like child support, student loans and income taxes. You must get a warning from the U.S. Treasurer before this happens.
- Also, your benefits can be reduced or stopped if your county decides that you got benefits that you shouldn't have. See our fact sheet [MFIP and Food Support Overpayments](#).



## Can they take money from my bank account?

Your bank account can't be frozen and the bank can't charge you garnishment fees if all of these things are true:

1. If you get: Social Security, SSI, Veteran's Pension, Federal Railroad Retirement, Civil Service Retirement, or Federal Employee Retirement System benefits
2. If these benefits are auto-deposited into the bank account
3. You don't transfer these benefits to a different account, and
4. The account balance is less than twice your monthly benefit. (For example, if your monthly benefit is \$1000 ( $2 \times \$1000 = \$2,000$ ), then \$2000 is automatically protected.)



If these things do not apply, then a garnishment might freeze the money in your bank account. You may not get a notice before this happens. You can still get your money back if you show it is exempt but you won't be able to use your money in your account while it is frozen.

If the creditor has a judgment against you then they don't have to give you a warning before they garnish your account. **The bank will send you a notice after the money is frozen.** The notice tells you your rights about exemptions and will have forms you can use to claim your exemptions. See page one for other ways to get these forms.

The creditor might be able to garnish you *before* they get a judgment if you did not answer a summons and complaint. In this case they must give you a notice before they garnish your funds. If you get a notice before garnishment, you can claim your exemptions before the garnishment to try and avoid it. If you have defenses (reasons that you don't owe the money) you might also be able to respond to (answer) the lawsuit and explain why you don't owe the money.

See our fact sheet [If You Are Sued](#).

**If you have written checks or if you have any automatic payments scheduled - they may bounce if your account is frozen!! You will owe fees!**

It will take time before your bank will release your funds. Talk to the people you wrote checks to and tell them about the problem. If you have set up automatic payments, these will bounce also. Cancel your automatic payments! Talk to the bank manager about what is happening. They might agree to cancel overdraft charges.

- Money in your bank account is exempt from **most** types of debts if your money is from:
  - Government assistance based on need
  - unemployment benefits
  - and most other public benefits (see section above)
  - workers' compensation
  - (most) pensions

- life insurance proceeds
  - veterans' benefits
  - the earnings of your minor child
  - any child support paid to you
  - insurance claims for exempt property
  - disability insurance benefits
- Courts in Minnesota have also ruled that EITC (Earned Income Tax Credit) money is exempt from most garnishments.
  - Student loan money is usually exempt but other kinds of loans might not be.
  - Sometimes money that is usually protected is **not exempt if they are collecting** debts like:
    - child support
    - alimony
    - student loans or
    - taxes
  - Gifts, and other peoples' money, are **not protected** from garnishment when they are put in your bank account. **BUT**, if you have a **joint account**, the other person's money may be protected if they don't owe the debt. Talk to a lawyer right away.
  - Exempt earnings only stay exempt for 20 or 60 days after you deposit them in the bank. See section below "Can They Take Money from my Paycheck?"

### How do I claim a bank account exemption?

If the creditor gives you a garnishment notice, follow the instructions in the notice right away. If your income is exempt, **send** proof of your exemptions to the creditor. Keep copies of what you send. Phone calls are **not** enough.

The bank must send you a written notice and exemption forms *after* the money in your account has been frozen. If your money is exempt (see above) fill out **BOTH** exemption notices. Give one to the person or company who is garnishing you and one to your **bank**. Keep a copy.



You must send a copy of your bank statements for the past 60 days to the creditor with your exemption claim. If your bank statements don't list where the money from a deposit comes from, you should also send deposit slips or other proof that the money came from an exempt source.

If the creditor does not object to your claim in 6 business days, the bank should put the money back into your account. If the bank does not get your exemption notice within 14 days, it will keep holding your money or give it to the collector. You can still claim your exemptions after 14 days and after the money is sent to the creditor, but it will take longer to get your money back.

## Can they take money out of my paycheck?

Your paycheck should be completely exempt if:

- You are getting or got government assistance based on need in the last 6 months (see section on benefits above)
- You were an inmate in jail or a correctional institution in the last 6 months.

These 2 things exempt your paycheck for **60 days** after you deposit it in your bank.

## I don't have those exemptions. How much can they take?

Most of your paycheck is protected - even if you don't get government assistance. Usually, they can only take up to 25% of your after-tax earnings as long as you still get a minimum of a \$290 per week.



- **ONLY 20 DAYS:** This “25% limit” also applies to paychecks deposited into your bank account – but only for 20 days. Example: if you deposit a \$1000 paycheck into your bank, \$250 can be garnished right away and the other \$750 could be garnished after 20 days.
- **BUT- if the garnishment is for child support,** then up to 65% of your earnings can be withheld.
- **NOTE:** If you **own your business** or are an **independent contractor**, then these wage exemptions may not apply. Talk to a lawyer.

## How do I claim a paycheck exemption?

You should get written notice at least 10 days before your paycheck gets garnished for the first time. Find out if your money is exempt (see above). If your earnings are exempt, fill out the exemption notice that comes with the letter. Send 1 copy to the person or company who is garnishing you, 1 copy to your employer and keep a copy for yourself. Do this as soon as possible. **If you don't do it within 10 days, you can still claim the exemption,** but it will take longer to stop the garnishment and get your money back. Phone calls are not enough.

## What happens after I claim an exemption?

You can call the creditor and ask when they will give your money back. The creditor might ask you for more information or proof, like benefits statements. You might get your money returned sooner if you send them the proof that they ask for. You might need to talk to a lawyer to help you prove your exemption claim.

## What if the creditor objects?

If the creditor wants more information or disagrees with your exemption claim, they have to ask for a court hearing within 6 business days to see if your money is exempt. They will send you a form to tell you the reason for the objection and when the court hearing will be. If you have more proof, you can send it again. It is possible to solve the issue before the hearing.

If you have to go to court remember to bring all documents that will help prove your exemption. If they froze the money in your bank account, be sure to bring bank statements for the last 60 days to the hearing. Also bring proof of where the garnished money came from so you can prove exemptions.

If you have to go to court but can't go on the day that is set, you can ask the court to have the hearing on a different day - **you need to do this before the hearing**. Contact the court as soon as you know that you need a different day. **Note:** changing the date is up to the court. **They might not change the date.**



**IMPORTANT: If you don't claim your exemptions or ask for a hearing on time, you can still do it later. You never lose your right to stop a garnishment or to get your exempt money back. Never rely on advice from a creditor or debt collector.**

Find more fact sheets at [www.lawhelpmn.org/LASMfactsheets](http://www.lawhelpmn.org/LASMfactsheets)

Find your local legal aid office at [www.lawhelpmn.org/resource/legal-aid-offices](http://www.lawhelpmn.org/resource/legal-aid-offices)

***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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