



Debt Collection and Social Security Benefits

Q.) Can creditors take my Social Security benefits?

A.) The federal government knows that Social Security benefits are critical to the survival of many low income senior citizens. So, federal law protects Social Security benefits from garnishment or other collection activities. Most creditors, such as credit card companies, cannot take your Social Security benefits from you. Supplemental Security Income (SSI) benefits are also protected from creditors under federal law. The only way most creditors can get your Social Security money is through payments you voluntarily make to them.

Q.) How long are my Social Security benefits protected?

A.) Social Security benefits are protected from creditors as long as you can prove that the money came from the Social Security Administration. It does not matter how long you have had the money in a bank account if you can trace it back to Social Security. One way to show the money came from Social Security is a bank statement that shows the direct deposit of your monthly benefits.

Q.) Can a creditor sue me if I cannot pay a debt?

A.) Yes, if you owe the debt, the creditor will be able to get a judgment against you. A judgment is a court order that states that you owe the creditor money. The fact that you cannot pay a debt is not a legal defense that would stop the creditor from suing you. However, while a creditor could sue you, they may not be able to collect from you.

Q.) Why wouldn't a creditor be able to collect from me?

A.) Many types of income are protected from creditors under state or federal law. Some examples common to seniors include: Social Security; Supplemental Security Income (SSI); Railroad Retirement; welfare benefits; and veteran's benefits. Some assets that are protected under Minnesota law include: a homestead worth less than \$450,000 and a car worth less than \$5,000. These are just a few examples. An attorney can go over your financial situation with you to determine if you have anything that a creditor could take from you against your will. If you do not have any income or assets that the creditor could legally take from you, you are judgment proof. If you are judgment proof, the creditor could sue you, but could not collect from you.

Q.) What should I do if I am sued?

A.) You should talk to an attorney as soon as you get legal papers from the creditor. The legal papers in a debt collection lawsuit would be called a Summons and Complaint. If you have a legal defense (such as the debt is not yours), you will need to let the creditor know within twenty (20) days of the day you got the Summons and Complaint. You would need to raise your defense in legal papers called an Answer. As stated earlier, the fact that you cannot afford to pay the debt is not a legal defense.

Q.) Is there anything I can do if I owe the debt but cannot pay it?

A.) Yes, you should find out if your income and assets are protected from the creditor. If you are judgment proof, you should send the creditor's attorney proof of that as soon as possible. As an example, a benefit statement from the Social Security Administration or 2 recent bank statements that show the direct deposit of Social Security benefits would prove that the money in your account is from Social Security. If you are not judgment proof, you should try and work out a payment plan with the creditor.

Q.) What should I do if the creditor attaches (freezes) my bank account?

A.) Again, you should talk to an attorney about your legal rights. A creditor has to sue you before they can try to take money from your bank account. If your account is attached, the bank will send you a form that allows you to tell the creditor if any or all of the money in the account is protected under the law. You will need to act quickly as the form needs to be returned to the bank, and to the creditor or the creditor's attorney within 14 days. Make sure you get legal advice if you are not sure that the money in your account is protected. You can be fined \$100 if you claim the money is exempt when it is not. The creditor can also be fined \$100 if they challenge your claim that your money is exempt in bad faith. An example of bad faith would be an attorney who challenges your claim after they have received proof that you are judgment proof. The bank cannot freeze federal funds: Social Security, SSI, Veterans benefits or federal pensions IF they are put into the account by direct deposit. The bank must protect the equivalent of 2 months of benefits and cannot charge you a service fee if the account is attached. Federal funds cannot be sent to the creditor.

Q.) Are my Social Security benefits protected in all situations?

A.) No, there are some times when your Social Security benefits can be taken to collect certain debts. Federal law allows Social Security benefits to be taken to collect unpaid child support, maintenance (alimony) or federal taxes. Congress has also authorized the government to collect unpaid student loans and food stamp overpayments from Social Security benefits. In addition, the Social Security Administration can withhold your Social Security payments to collect a Social Security overpayment. If you find yourself in any of these situations, you should contact your local legal services office or a private attorney as there are some protections.

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