



*Legal Hotline for Michigan Seniors
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A program of Elder Law of Michigan, Inc.*

FACTS ABOUT GARNISHMENT

If you have an unpaid bill, a creditor or collection agency might threaten garnishment. Garnishment is a legal procedure to take your money, for example from your bank account or your wages. However, garnishment is not allowed until a court has determined that you owe the money. A creditor can not garnish any of your income until it first sues you and gets a court judgment. Then it is called a judgment creditor.

If you owe money to a bank or credit union, e.g. on a loan, it may take money out of your accounts without a court order or prior notice to you. This is called a **set-off**. Federal benefits such as Social Security can be set-off (the amount of your check reduced) for child support or alimony obligations and for debts owed to the federal government such as back taxes and student loans.

Anyone who holds your money can be garnished to satisfy an unpaid court judgment. Common sources include: bank and credit union accounts, wages due from your employer, tax returns or credits due from the state of Michigan, and life insurance cash surrender value.

If you owe a court judgment and your money is deposited in a financial institution, the creditor can send a notice to try to garnish your account using court form MC-13. Generally the account will be frozen until the garnishment procedure is completed. This might result in a bank fee as well as bounced checks. Effective September, 2009, financial institutions are not to freeze accounts in which the only funds are direct-deposited Social Security, Supplemental Security Income, Railroad Retirement, Black Lung, or Veterans Assistance, benefits because federal law exempts these benefits from garnishment. The intent of the law is to require financial institutions to carefully review your account to see if only these types of government benefits are in it; if that is the case, the financial institution will not proceed further with the freeze or the garnishment. It is very important to remember that the government benefits in your account are only exempt when they are **the only funds in the account**. Other funds that might be in the account, e.g. a gift, or some earnings, are not exempt and can make it difficult for the financial institution to make a determination of what is in the account. This is called comingling of funds and you should do all you can to prevent it from happening. **To make sure the government benefit funds in the account remain exempt, do not add any other funds to it.**

The bank or credit union is required by law to send you a copy of the garnishment notice as well as its response to the court using court form MC-14. This is referred to as the Disclosure. If the financial institution considers your funds exempt from garnishment it will fill out line 2c of the

Disclosure. If this line is not filled out the burden is on you to file objections to the garnishment with the court within 14 days. The court has a form MC-49 for this purpose. A hearing is scheduled after you file the form. If you prove that the money in your account is exempt, then the court will not allow the garnishment to continue. If you fail to file the objection or show up at the hearing you will lose the funds in your account. If you need to file an objection, contact the Legal Hotline for our helpful pamphlet, *Objections to Garnishment*.

If you are employed, a judgment creditor may attempt to garnish your wages. A form is sent to your employer to compute the amount available for garnishment. By federal law, at least \$217.50 per week is exempt from garnishment. If you make more than that, up to 25% of your wages can be paid to the judgment creditor. These limits do not apply to child support or alimony. If you think the amount of wages garnished is incorrect you can file objections as discussed in the previous paragraph.

The freeze on the money in an account while a garnishment attempt is pending means that you might not have access to your money for a number of weeks. To avoid this inconvenience, and to avoid having to prove to the court that your funds are exempt, consider having your checks sent direct to you rather than deposited in an account. After cashing your checks you would immediately pay your bills in cash or money orders so your income is not held up by a garnishment attempt. Be sure to get receipts if you use this method of payment. Some

financial institutions charge a fee (e.g. \$50) when there is a garnishment attempt against your account. You may want to check to see if your bank or credit union has such a fee.

Another possibility to further protect your money is to have your Social Security retirement, disability or SSI benefits paid to you through the use of a Benefit Security Card. This is like a debit card and your funds are 100% protected from garnishment. You can call the Legal Hotline for more information about the Benefit Security Card and request a copy of the Hotline's pamphlet, *SS Benefit Security Card*.

Discussed below are some types of income that are exempt from garnishment. This is not a complete listing of garnishment exemptions. You should check with an attorney if you have questions about a specific type of income or asset.

Some income is exempt from garnishment both before and after it is paid to you. This includes Social Security, Supplemental Security (SSI), state welfare and Veteran's benefits. Remember that federal benefits are subject to set-off for child support, alimony, and debts owed to the federal government. It is best not to deposit nonexempt income in the same account with exempt income since some judges will allow garnishment of the entire account in that case. State law also exempts Individual Retirement Accounts (IRA's) and life insurance payable to a spouse or child of the insured.

Certain types of income are exempt from garnishment before they are paid to you, but can be garnished if you deposit them in a financial account. Examples include: unemployment compensation, workers' compensation, state and federal civil service retirement benefits, and military retirement benefits.

For most debts, pension benefits can not be garnished before they are paid to you. Once you receive the pension income it can be garnished, for example if you deposit it in a bank account. If you are aware of a threatened lawsuit or a court judgment against you, consider paying your bills in cash or money order as discussed above rather than depositing your pension check in an account where it could be garnished. For child support or divorce obligations, your pension benefit can be reduced before it is paid to you.

State of Michigan homestead property tax credits and tax refunds can be garnished by a judgment creditor and are subject to set-off to pay alimony, child support, and debts owed to the state such as taxes. The state home heating credit can not be garnished or set-off.

Garnishment procedures vary from state to state. The above information is based on Michigan law and court rules.

The Legal Hotline is a program of Elder Law of Michigan, Inc., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph, Suite C-200, Lansing, MI 48917. Thank You.