

COLLECTION OF A JUDGMENT DEBTOR AND CREDITOR IN MAGISTRATE COURT

This pamphlet is not designed to give legal advice; it simply describes a small portion of the court's procedures. If you have filed a lawsuit and you want legal advice, you should consult an attorney.

WHAT IS A JUDGMENT?

At the end of a trial the judge or jury will make a decision. The judge will then provide the parties with a written decision called a Judgment. The Judgment states who won or lost and the amount of damages (money), attorney's fees or court costs awarded, if any. The Judgment does not state when or how the money will be paid.

The party to whom the money is owed is called the Judgment Creditor (Creditor). The party owing the money is the Judgment Debtor (Debtor). Judgments are recorded by credit reporting agencies and may affect the Debtor's credit rating. It is the Creditor's responsibility to collect the Judgment.

The Creditor may begin the collection process immediately after the Judgment is filed. There are four basic ways for a Creditor to collect a Judgment in Magistrate Court:

- Agreement between the parties
- Garnishment
- Execution of Judgment
- Supplemental proceedings

WHAT IS GARNISHMENT?

Garnishment is the legal process whereby money or property that is owed to the Debtor or that is being held by someone (the Garnishee) for the Debtor, is taken to pay a Judgment. Wages and bank accounts are the most commonly garnished property.

A Writ of Garnishment directs the Garnishee to hold money or property owed to or owned by the Debtor, until the court determines whether it should be paid to the Debtor or the Creditor. If the Garnishee has any of the Debtor's money or property, the Garnishee must hold it in accordance with the law, until the court orders its distribution.

To garnish a Debtor's property, a Creditor must file an Application for Writ of Garnishment with the court. The Application must include the name and address of the employer, bank or person holding the Debtor's property.

When the Creditor files an Application with the court, the clerk will issue a Writ of Garnishment. The Creditor must serve the Application for Writ of Garnishment, the Writ of Garnishment and the Answer to Writ of Garnishment form on the Garnishee.

If the Garnishee is a bank, savings and loan or credit union, the Creditor also must serve a blank Notice of Right to Claim Exemptions and a blank Claim of Exemption on the Garnishee. The Garnishee is required to mail or deliver copies of these documents to the Debtor. When an Application for Writ of Garnishment is filed, the clerk will prepare a service packet with all of the required documents.

The Garnishment service packet must be served on the Garnishee in the same manner as the service of a Summons.

After the Writ of Garnishment is served, the Garnishee must file a written Answer with the Court within 20 days. If the Garnishee does not do so, the Creditor can file a Motion for Default Judgment Against the Garnishee. If the Garnishee defaults, the Garnishee may be responsible for the full amount of the Judgment.

If the Garnishee files an answer stating that it owes wages to the Debtor, the court will enter a Judgment on Writ of Garnishment and Order to Pay. This order requires the Garnishee to pay a portion of Debtor's wages to the Creditor.

The maximum amount the Garnishee may pay the Creditor is the greater of the following: 25% of the Debtor's disposable earnings per week or the amount of the Debtor's disposable earnings that exceeds 40 times the hourly minimum wage per week. A garnishment for wages continues until the Judgment is paid in full or until the Debtor is no longer employed by the Garnishee.

If the Garnishee owes money or property other than wages to the Debtor, the court may enter a Judgment on Writ of Garnishment and Order to Pay directing the Garnishee to pay all of these funds or deliver the property to the Creditor.

WHAT IS EXEMPT FROM GARNISHMENT?

Within 10 days after the Writ of Garnishment is served, the Debtor may file a Claim of Exemption. A Claim of Exemption lists money or property that cannot be garnished by law.

Some common exemptions are:

- Social Security benefits
- SSI benefits
- Welfare benefits
- Veterans benefits
- Workers and unemployment compensation
- Life, accident and health insurance proceeds
- Some pensions

If the Debtor files a Claim of Exemption, the money or property will be exempt from garnishment unless the Creditor files an Objection. An Objection may be made by filing a Notice of Dispute form with the court. If the Creditor files an Objection, the court will hold a hearing within 10 days to decide whether to exempt the disputed money or property from garnishment.

WHAT IS EXECUTION OF JUDGMENT?

Execution of Judgment is the legal process of enforcing a Judgment by seizing and selling the Debtor's property. A Writ of Execution permits the County Sheriff to take and sell property of the Debtor. The proceeds from the sale are then paid to the Creditor and applied toward the amount owed in the Judgment.

To obtain a Writ of Execution the Creditor must serve the Debtor with a Notice of Right to Claim Exemptions at least 10 days before the clerk issues a Writ of Execution.

A Notice of Right to Claim Exemptions tells the Debtor that he or she can claim certain types of property exempt from execution. If the Debtor files a Claim of Exemption, the sheriff may not take any of the Debtor's exempt property. However, this only holds true after the Debtor has identified the exempt property in his or her Claim of Exemption. If the debtor does not file this Claim, the sheriff can take possession and sell any or all of the Debtor's personal property.

The Debtor may claim the following property as exempt:

- Personal property up to \$500
- Tools of the trade up to \$1,500
- One motor vehicle up to \$4,000
- Clothing
- Jewelry up to \$2,500
- Furniture and books
- Medical and health equipment
- Pension and retirement proceeds or accounts
- A dwelling up to \$30,000 (if the Debtor is married or supporting another individual)
- If the Debtor does not own a home, an additional \$2,000 of any type of property the Debtor chooses to declare as exempt.

If the Debtor files a Claim of Exemption and the Creditor disputes that the property is exempt, the Creditor can file an Objection to Claim of Exemption. If an Objection is filed, the court will hold a hearing and the judge will decide if the property is exempt.

If the Debtor does not file a Claim of Exemption, the sheriff will go to the Debtor's residence within 30 days of the issuance of the Writ of Execution, take the Debtor's property and sell the property at a public sale. If the Debtor files a Claim of Exemption and no Objection is filed, the sheriff will take and sell only the non-exempt property. The proceeds of the sheriff's sale will be used to pay the costs of the sale and the Judgment Creditor.

POSTPONING COLLECTION

The collection process can be stayed, meaning that the process is postponed, if the Debtor files Bankruptcy, files an appeal and posts a bond with the Court, or files a Motion to Set Aside Judgment and posts a bond. The judge determines the amount of the bond.

INFORMATION ABOUT THE DEBTOR

If the Creditor wants information about the Debtor's assets, employment or property, the Creditor can request a supplemental proceeding. A supplemental proceeding is a hearing to obtain information about the Debtor, either directly from the Debtor or from someone else who knows about the Debtor's finances, such as a bank or employer. A Creditor can subpoena any person or document in an attempt to gather this information. A subpoena must be served on the person having or holding the information requested.

WHEN THE JUDGMENT IS PAID

When the Debtor partially or fully pays the Judgment, the Creditor must file a Partial or Full Satisfaction of Judgment with the court. The case is closed when a Full Satisfaction of Judgment is filed.

If the Judgment has been fully paid and the Creditor does not file a Satisfaction of Judgment, the Debtor can file a Motion for Satisfaction of Judgment with the court. The judge will then schedule a hearing to determine if the Creditor has been paid.

Other pamphlets are available at the Magistrate Court Clerk's office.