

Answers to Your Questions About

# Garnishments

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If you win a case in small claims court, county court, or district court for an action seeking payment of money, the court will issue a judgment in your favor. This is a court order requiring the losing party (**judgment debtor**) to pay you (**judgment creditor**) the money. The judgment debtor may pay the judgment willingly after the trial.

If the judgment debtor does not pay you after the trial, there are various options available to you. **Remember, the court is not responsible for collecting the money and sending it to you.** There are a number of ways to collect a money judgment once it is entered. Garnishment is one method of collecting a judgment. Some others are liens and attachments. This brochure addresses garnishments.

Ask the judgment debtor to pay you the money. If he or she refuses, follow the steps below.

You may **garnish** the losing party's personal property or any general debts owed to the losing party, such as wages or rent. You may garnish the losing party's bank account.

#### **To garnish a bank account:**

- If you win a money judgment, the losing party (judgment debtor) is required to provide you with any information necessary for helping you collect the money, such as information about bank accounts, property owned, employment, address, etc.
- Fill out a **Writ of Garnishment with Notice of Exemption and Pending Levy**. If the debtor is a person (not a business), bring the writ to the clerk of court where the judgment was entered. It will be signed and issued by the clerk. There is a fee for this service.
- Take the original Writ of Garnishment and two copies to the sheriff for service on the judgment debtor and on the bank (the garnishee). The sheriff will charge a fee for the service of the writ. A friend over the age of 18 may serve the writ for you, but make sure that the friend fills out the return of service and signs it in front of a notary public before you file it with the court.
- After the service of the writ on the garnishee and the judgment debtor, the sheriff will send you two **Returns of Service** as proof that the writ was served.
- File both the Returns of Service with the clerk of the court.
- If a copy of the Writ of Garnishment was properly served on the judgment debtor and no written "claim of exemption" (a list of property or wages that are exempt from garnishment) was filed within 10 days by the judgment debtor, the clerk of court will order the bank (garnishee) to pay the garnished amount to the court. Upon receipt of the garnished funds, the clerk of court will write a check to you.

**If you do not know where the losing party lives or has a bank account, you must "serve" a Request for Interrogatories on the judgment debtor. This can be a**

**complicated process and may require talking with an attorney or checking with your local bar association about free clinics or resources.**

### **Writ of Continuing Garnishment**

- This writ lasts for 180 days (90 days if judgment was entered prior to August 8, 2001). The garnishee (employer) will figure out the amount to be taken from each of the losing party's paychecks within the appropriate period. The garnishee must file the answer on the Writ of Continuing Garnishment to the clerk of court, with a copy to the judgment creditor. This must be done no less than five and no more than 10 days following the time the judgment debtor receives earnings for the first pay period affected by the writ or 40 days following the date that the writ was served.
- The garnishee will pay any *nonexempt earnings* and deliver a calculation of the amount of exempt earnings form *to the judgment creditor or clerk of court*.
- If the checks are to be sent to the judgment creditor, then the garnishee must also send the answers to the court. The garnishee may need to make one additional mailing of the answers to the clerk of court every 90 days if the check is designated to be mailed to the judgment creditor.
- To assist judgment creditors in receiving funds in a more timely manner, the judgment creditor who is represented by an attorney or is a licensed collection agency may designate in the Writ of Continuing Garnishment the address of the judgment creditor or judgment creditor's attorney to whom the check for nonexempt earnings is to be mailed.
- The judgment creditor is *required* to provide to the judgment debtor, upon reasonable request, a written accounting of all funds received to the date of the request, including the balance due at the date of request. The judgment debtor may file objections to the calculation of exempt earnings with the court and may contest their judgment record.
- Only one Writ of Continuing Garnishment may be served on the employer within any 90-day period.

### **To garnish the judgment debtor's wages:**

- Fill out a Writ of Continuing Garnishment. Take it to the clerk of the court, who will sign it.
- Take the original and two copies of the signed writ to the sheriff for service in the garnishee (in this situation, the debtor's employer is the garnishee).
- After the writ is served, the sheriff will provide you with a Return of Service as proof that it was served.
- File the Return of Service with the clerk of the court.
- If a garnishee does not answer to pay any nonexempt earnings as directed within the required time, the clerk of court will enter (upon request) a default against the garnishee.

### **Property that cannot be garnished:**

- Certain necessary items cannot be garnished. Some of these items include:
  - basic clothing up to \$1,500
  - watches and jewelry up to \$1,000
  - library, family pictures, and school books up to \$1,500
  - burial sites
  - \$3,000 worth of household goods
  - workers' compensation benefits
  - unemployment compensation benefits
  - insurance benefits
  - public employee retirement benefits
  - social security and civil service benefits
  - proceeds of the sale of homestead property
  - in certain cases, cars, mobile homes, or house trailers may not be included.
- There is a limit to the amount by which a person's paycheck can be garnished. The *maximum amount* that can be deducted from a person's weekly wages is the lesser of (1) 25 percent of his or her "disposable earnings" (what is left after required deductions are made, such as FICA and social security) or (2) the amount by which weekly earnings exceed 30 times the federal hourly minimum wage (\$5.15 per hour as of September 1, 1997). In other words, if a person is only working 30 hours a week at a minimum wage, or if a person's weekly earnings are only the equivalent of 30 times the hourly minimum wage, these wages will be exempt from garnishment. The amount is different for child support judgments.

This brochure is published as a public service by the Colorado Judicial Branch. If you have comments or questions, please call the clerk's office at your local courthouse.