

INFORMATION FOR DEBTORS

HOW TO PROTECT YOUR ASSETS FROM CREDITORS IN OREGON

OVERVIEW

If you owe money to a creditor, who is trying to collect the debt by taking your property or money, some of your assets are protected by law. Some money cannot be taken from your bank account at all. This money is called “not subject to garnishment.” Some of your money or other assets may be taken, but you should be able to get them back, if you follow the procedures. These assets are called “exempt.” If all of your assets are exempt or not subject to garnishment you are called “judgment proof.” If you are judgment proof this means even if a creditor gets a judgment and garnishes you, they will have to give back anything they get, IF you follow the court procedures to do a “Claim of Exemption.” Finally, if you have money or property over certain limits the creditor can take and keep those assets. These assets are called garnishable or non-exempt property.

GARNISHMENT

Garnishment is a legal process that lets a creditor take your money or property to pay a debt you owe. Creditors may garnish your money or property only after they have sued you and obtained a court judgment. It is important to understand the garnishment process if: (1) a creditor has gotten a court judgment against you; (2) a creditor is suing you in court for a debt; (3) a creditor is threatening to sue you in court for a debt; or, 4) you are opening a new account and want to protect deposits to the account. You do have rights even if a creditor has a judgment against you, and they are not allowed to threaten or harass you or your family to get you to pay a debt.

FUNDS NOT SUBJECT TO GARNISHMENT

Income from some sources is always protected from creditors and can't be garnished at all. It is called “not subject to garnishment.” To qualify, the money must be: 1) readily identifiable; 2) direct-deposited into your bank account; and 3) come from one or more of the following sources.

- * Payments from the Social Security Administration, including SSI and SSD;
- * Public assistance payments from the state or a state agency;
- * Unemployment compensation payments from the state or a state agency;
- * Payments from a public or private retirement plan as defined in ORS 18.358;
- * Veterans benefit payments from the Veterans Benefits Administration;
- * Workers' compensation payments from a workers' compensation carrier; and/or
- * Black lung benefits payments from the US Department of Labor.

Since benefits are only protected if they can be identified as coming from one of the protected sources, and since the benefits must be direct deposited, if you get any of these benefits you should have the payments deposited directly to your account, and you should never put other money in that account.

If you get one or more of the above benefits, you should tell your financial institution by filling out and giving it an Affidavit. There is no cost to filing this Affidavit. Your financial institution or legal aid office can give you a copy of the Affidavit you need. Your financial institution must protect these kinds of funds if they have been direct deposited and can be reasonably identified, even if they do not have your Affidavit on file.

GARNISHMENT FEES

If all of your money is not subject to garnishment your financial institution can't charge you a garnishment fee. But, if some of it is only exempt they may charge you a fee.

EXEMPT MONEY AND PROPERTY

Other money in your account and other kinds of property are also protected by law. These assets are referred to as being "exempt." Exempt assets can be garnished, but there is a legal process you can use to get it back. If exempt money or property has been garnished, you must go to court to object that your protected "exempt" money or property has been taken, and ask the court to order your creditor to return the exempt money or property to you. You must file what is called a Challenge to Garnishment, also sometimes called a Claim of Exemption. You should get this form when your account or other property is garnished. You should also get a list of what money and property is "exempt," when you are notified your account or your property is being garnished. If any exempt money or property has been garnished, you should file your Challenge to Garnishment form with the court right away so you can get your money or property back as soon as possible. If you need these forms they are available at www.oregonlawhelp.org. You can file these forms after your property has been garnished. If the judge agrees that the property was exempt then the judge will order the creditor to return the property to you immediately. The creditor should bring the challenged assets to the hearing with them so that they can give them to you if that is what the court decides.

FOR MORE INFORMATION

Your bank should be able to give you a copy of the Affidavit regarding funds not subject to garnishment. The Affidavit is also available at www.oregonlawhelp.org. If you have general debt issues you may also wish to get more information. Free information is available on many legal issues at www.oregonlawhelp.org. You may also wish to contact your local legal aid program, consult at bankruptcy attorney, or generally speak to a private attorney. If you want to hire a private attorney you may contact the Oregon State Bar Lawyer Referral Service at (800) 452-7636, Monday to Friday, 9am-5pm, to get a 30-minute consultation with a private attorney for \$35.00. If you go over ½ hour they can charge more. Your county law library may also have information. You should remember that many companies offer to help people who are in debt get their affairs in order, and many of these companies are not reputable businesses, if you are going to pay someone to help you make sure you investigate them first

This brochure does not take the place of legal advice. This information is an overview and is not a complete statement of the law. For answers to specific legal questions, please talk to a lawyer or visit your local law library. If you want to hire a private attorney you may contact the Oregon State Bar Lawyer Referral Service at (800) 452-7636, Monday to Friday, 9am-5pm, to get a 30-minute consultation with a private attorney for \$35.00. Further information, including a list of Exempt Oregon Wages, Money and Property and about how to file a Challenge to Garnishment, is also available at www.oregonlawhelp.org. or at your local legal aid office.