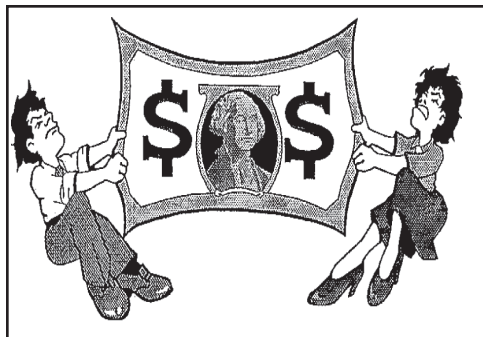


GARNISHMENT AND BANKRUPTCY

What you need to know about Garnishments and Bankruptcies



GARNISHMENT OF WAGES

What is a garnishment?

Garnishment is taking all or part of a person's wages or bank account to pay a debt. Usually you must have been sued and lost before someone can garnish you. If you lost, the judge would have signed an order saying that you owe a certain amount of money. That order is called a judgment.

If you think that you have not been sued, check with the court to see if there is a judgment against you or, if you think you don't owe as much as the garnishment says you owe, you can challenge the garnishment.

If you want to make such a challenge, you should contact a lawyer. If you can't afford a lawyer and your local legal services can't help, you can file a "traverse" which simply says that the plaintiff's claims are untrue.

How much can be garnished each week?

If they are garnishing your wages, they can't take more than the smaller of:

- 25% of your "disposable earnings" (to figure out what your disposable earnings are, subtract all state, federal, social security, Medicare, etc. taxes from your whatever your check says your pay would be without any deductions [but do not subtract amounts deducted for things such as credit unions, insurance, union dues, etc.]; or
- the amount by which wages after deductions that week exceeds 30 times the minimum wage (which is \$6.55 now and will go up to \$7.25 on July 24, 2009).

For example:

Assume you earn \$250 per week. You can start to figure out how much they can legally take in a

garnishment by using the two calculations set out above:

- 1) First, subtract the amount of federal, state, Medicare, and social security taxes withheld from your check from your "pay before deductions" of \$250. If \$20 were withheld as federal income tax, \$10 as social security, and \$10 as state tax, you would add $\$20 + \$10 + \$10$ and get \$40. You then subtract the \$40 from the \$250, leaving you with \$210 (which is called your "disposable income".) Then take 25% of that amount. To do this, multiply the \$210 by .25. The result is \$52.50.
- 2) Now multiply the minimum wage amount by 30. Thus, \$6.55 multiplied by 30 is \$196.50. Then subtract the \$196.50 from your "disposable earnings" of \$210. The result is $\$210 - \196.50 or \$13.50.

Now compare the answers you got when you used the two formulas. One answer was \$52.50 and the other was \$13.50. Take the smaller amount, \$13.50, and this is the amount that can be taken out of your wages for the garnishment.

How much can be withheld to pay child support and alimony?

50% of your disposable earnings can be garnished for child support or alimony.

There is no limit on the amount they can take from your wages on bankruptcy court orders or debts due for state or federal taxes.

What income can be garnished?

Money paid for personal services, such as wages, salary, commissions, and bonuses. Pension or retirement payments can only be garnished after they are in your bank account.

What income cannot be garnished?

Most government programs such as social security, SSI, TANF, and veterans benefits.

Can my bank account be garnished?

YES. **But** if your bank account contains money that is exempt (such as social security, SSI, TANF), that money cannot be garnished. If your bank account contains payments from a pension or retirement account, they can only take the part they could take if those pension payments were wages.

What if they take more than they should?

You should talk to a lawyer to help you get the improper amounts back. It will be much easier to fix if you do something less than 45 days after the garnishment is served on your employer or the bank.

Can I be fired for having garnished wages?

You **cannot** be fired for one garnishment. However, you **can be fired** if more than one creditor garnishes you.

BANKRUPTCY

What is bankruptcy?

A bankruptcy is a legal proceeding (a lawyer is needed) in which a debtor (person owing money) can discharge (get rid of) all or part of his or her debt.

Are all bankruptcies the same?

NO. There are different types of bankruptcies. There are two types of consumer bankruptcies.

Chapter 13. Allows you to pay all or part of your debts (depending on what you can afford to pay) over a 3 to 5 year period. Once you finished your payments and get a discharge, you won't have to pay anything to the creditors you listed on your bankruptcy. For this type of bankruptcy, you must have regular income such as wages, a pension, social security, etc. You must also pay a certain amount each month to the court.

This money you pay to the court will be divided among your creditors according to a plan prepared by you and approved by the judge.

You can file this type of bankruptcy as often as you like. You can keep your home from being foreclosed and/or your car from being repossessed with a Chapter 13 bankruptcy.

Chapter 7. Under this type of bankruptcy, most of the money you owe is discharged (gotten rid of). If everything you own (including the equity on your home or car) is worth more than \$20,000, some of it may be sold to pay to the people you owe money to.

Also, if you have bought something on credit (such as a house or car), you will either have to keep paying on it or give it back, you do not have to make any payments into court. You do not have to have any income to file this type of bankruptcy. You may only get a Chapter 7 discharge once every eight years.

Other questions about bankruptcy:

What happens when I file?

You must provide the court with a list of everyone you may owe money to or who believes you owe money to them (your creditors.) The creditors are then notified of the bankruptcy. Once your creditors have been notified that you have filed for bankruptcy, they cannot try to collect money from you. Any proceedings in other courts (such as lawsuits for money and garnishments) have to be stopped.

What debts will I have to pay after declaring bankruptcy?

You will still have to pay most taxes, alimony, child support, student loans, and other types of debt caused by bad behavior (such as fraud, crimes, or drunk driving).

How will it affect my credit?

A Chapter 7 will stay on your credit report for 10 years. A Chapter 13 will stay on your credit report for seven years.

How do I decide which type of bankruptcy is best for me?

Lawyers are required to explain both types of consumer bankruptcy to you. Many lawyers will talk to you about bankruptcy without charging you anything. However, if they take your case, they will charge you a fee. Consider calling a lawyer or lawyer referral service. Make sure you ask the lawyer if he or she will give you a free initial consultation.

If you are having problems with garnishments, threatened foreclosures or repossessions, or you are thinking about filing a bankruptcy for any other reason, you should contact a lawyer of your choice. If you cannot afford a lawyer or if you don't know a lawyer, you may contact your local legal services.

This brochure prepared in February 2009 gives you general information, not legal advice. You can get legal advice only from a lawyer. Deadlines are extremely important in most legal matters.

Please see a lawyer about specific questions.

For more information contact:

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