

Montana Legal Services Association

19 Things a Debt Collector Cannot Take



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19 Things a Debt Collector Cannot Take

There are laws in Montana that protect certain income and property from debt collectors. In this article, you will learn:

- What income and property are protected from debt collectors;
- The situations when income or property may not be protected; and
- Download a free court form to ask for your protected income or property back.

This article only covers Montana law. If you have debt in a different state, you'll want to find legal help in that state.

Introduction

The first thing that you should know is that debt collectors and creditors cannot take your income or property unless they sue you in court and win a judgment. Once a debt collector wins and gets a judgment, they may try to collect on that judgment by an account levy or wage garnishment.

The rules for what a debt collector or creditor can take are complicated. It is helpful to know a few legal terms when figuring out if your income or property is protected from debt collectors and creditors.

A **levy** is when someone collects on a judgment by taking money from your bank account. **Wage garnishment** is when someone collects on a judgment by taking money from your paycheck. This article covers account levies and wage garnishment.

When the law protects certain income and property from debt collection it is **exempt** from collection on a judgment. A creditor with a judgment sometimes will levy on a bank account with exempt income in it. It is your responsibility to file court paperwork to get your exempt income back. You must file the court paperwork within 10 business days from when the exempt income was taken.

Your income and property are only exempt if the money you owe is from an **unsecured debt**. An unsecured debt is debt that is not attached to something that you own. Common unsecured debts are hospital and credit card bills and debts to old landlords.

There are different rules for **secured debts**. You put down collateral for a secured debt. Common secured debts are mortgages, construction liens, car loans, and rent-to-own agreements. If you are having trouble paying off a secured debt, this article isn't right for you. A creditor may be able to repossess your car or rent-to-own property or foreclose your house. It would be a good idea to read our article on Foreclosure or our article on Repossessions.

There are also different rules for **priority claims**. Priority claims are debts where the law says that someone can take your exempt income or property to pay back a debt. Common types of priority claims are:

- Money owed to the IRS for taxes
- Money owed for local taxes
- Money owed for restitution for a crime
- Money owed for child support
- Money owed for spousal support, also called alimony
- Student loans.

Different laws apply to priority claims. So, if you owe money on any priority claims, this article may not be helpful and it would be a good idea to talk to a lawyer.

What income and property are exempt?

Remember, exempt means that it is protected by law, and creditors and debt collectors should not take it from you. Here are 19 types of exempt income or property:

1. Burial plot
2. Child support paid to you
3. Spousal support paid to you
4. Health Savings Accounts (HSAs)
5. Individual Retirement Accounts (IRAs) and Roth IRAs.
6. Medical and/or disability benefits
7. Retirement benefits
8. Social Security and SSI benefits
9. Unemployment benefits
10. Life insurance policy with a cash value
11. Veterans' benefits
12. Welfare benefits, also called Temporary Assistance for Needy Families (TANF)
13. Worker's compensation
14. Professionally prescribed health aids
15. Part of your wages. This one is complicated. Go to the Learn More section for more information.
16. \$364,000 of home equity. This amount increased by 4% each year after 2022. This one is a little complicated. Go to the Learn More section below for more information.
17. One motor vehicle, up to \$4,000 in your interest. This one is a little complicated. Go to the Learn More section below for more information.
18. Personal property up to \$7,000 in value, with no one item worth over \$1,250. This one is complicated. Go to the Learn More section for more information.
19. Tools, equipment, uniforms, books, and other things needed for work, up to \$4,500 in value. This one is complicated. Go to the Learn More section for more information.

You only have 10 business days to file court paperwork to ask for your exempt income or property back. If you know for sure that someone took your exempt income or

property, skip to the bottom of this article to the Take Action section to download our Notice of Claimed Exemptions to ask for it back.

You can find the laws that say which income and property are exempt at:

- 25-13-608, MCA (completely exempt)
- 25-13-609, MCA (partially exempt)
- 25-13-614, MCA (wages)

If you're still not sure what to do, keep reading and we'll walk you through the more complicated ones.

Learn More

How much of my wages can a debt collector garnish?

The first \$217.50 of your weekly disposable income is protected from garnishment. If you are making more than \$217.50 in weekly disposable income, the most a debt collector can take from your wages is **25% of your weekly disposable income**. Disposable earnings means the part of your paycheck leftover after mandatory withholdings. Common mandatory withholdings are:

- FICA,
- Medicare,
- State and federal tax withholdings,
- Union dues, and
- Some other already-existing garnishments.

Finding out if your wages are exempt is complicated. Use our Exemptions Worksheet at the bottom of this article to find out if your wages are exempt.

If someone has taken more than they should from your wages, you only have 10 business days to file court paperwork to ask for it back. You can download our Notice of Claimed Exemptions form at the bottom of this article to ask for your exempt wages back.

If you still aren't sure if your income is exempt, talk to a lawyer.

You can find the laws that says how much of your wages are exempt at 25-13-614, MCA.

Can creditors or debt collectors take my home?

If you owe money to the bank on your mortgage, the bank may be able to take your home through a foreclosure. If you are behind on your mortgage, talk to a lawyer right away.

You may protect up to \$364,000 of equity in your home from creditors for unsecured debts. This amount increases by 4% each year after 2022. Unlike a mortgage, unsecured debts are not attached to anything you own. For example, medical or credit card bills. Home equity is the value of your home minus what you have left to pay on your mortgage.

Your home is not automatically protected, you must file a Homestead Declaration to protect your home equity up to \$364,000 (or more after 2022).

Can creditors or debt collectors take my car?

Remember, different rules apply if you owe money on your car loan. One motor vehicle may be exempt. For your vehicle to be exempt, your interest in it may not be more than \$4,000. "Your interest" means the sale value of the vehicle minus any loans you owe on it. Sale value is not what you paid for it but how much you could sell it for now.

Example 1: You bought a car for \$6,000. You could only sell it for about \$5,000 now. And, you still owe \$2,000 on your car loan. Take \$5,000, minus \$2,000 to get your interest of \$3,000. In this case, your car is exempt since your interest is less than \$4,000.

Example 2: You bought a car for \$10,000. You could still sell it for about \$8,000. And, you still owe \$2,000 on your car loan. Take \$8,000 minus \$2,000 to get your interest of \$6,000. In this case, your car is not exempt because your interest is more than \$4,000.

But, there are risks and costs to selling a used car. So, a debt collector or creditor may decide that it is not worth it to take your car if your interest is close to \$4,000. Remember, though, that is up to the creditor or debt collector to decide. The law says that they can. If they do take your car, they'll have to pay you \$4,000.

If you have any questions on if your car is exempt, talk to a lawyer right away.

Can debt collectors take my stuff?

Your personal property is exempt up to \$7,000 in total value. Personal property includes things like furniture, appliances, jewelry, clothing, books, firearms, animals, and musical instruments. To be exempt, one item cannot be worth more than \$1,250.

Like a car, there are risks and costs to selling personal property. Also, it is common for people to overvalue their personal property because they had to pay for it, and it's close to them. Think about how much you could sell your personal property for at a garage sale or pawn shop when coming up with its value.

A debt collector or creditor may decide that it is not worth it to take your personal property if your interest is close to \$7,000. Remember, though, that is up to the creditor or debt collector to decide. The law says that they can.

If you have any questions on if your personal property is exempt, talk to a lawyer right away.

Can debt collectors take my tools?

Property that you or your dependents need for work is exempt up to a total value of \$4,500. This includes things like tools, equipment, uniforms, and books that you use for work.

If you have any questions if your tools or work equipment are exempt, talk to a lawyer right away.

You can find the laws that says what property is partially exempt from collection at 25-13-609, MCA.

What does a debt collector have to do to take my income or property?

Debt collectors and creditors cannot take your income or property without a court order. There is a process that they must follow.

First, a debt collector or creditor must contact you in writing about the debt using your last known address. If a debt collector has contacted you but hasn't sued you yet, read our article [Know Your Rights When Dealing with Debt Collectors](#).

Second, if a debt collector or creditor wants to get a judgment against you, they must have you personally served with court papers. After that, you have the right to file a written answer within a limited amount of days after you are served. If you do not file a written answer with the court before your deadline, the debt collector may ask the court to issue a default judgment against you. You can learn more by checking out our article [How to Answer When You Get Sued](#) right away.

Third, the court will usually schedule a hearing and/or mediation to decide the outcome of the lawsuit. In a mediation, the parties to the lawsuit may try to come to an agreement. In a court hearing, the judge will decide. Only after a judge issues a written judgment saying that you owe the debt can the debt collector or creditor begin collecting on the judgment.

Be careful: sometimes a debt collector will file a “**Motion for Summary Judgment,**” depending on what you put in your answer that you file with the court. A Motion for Summary Judgment asks the court to make a decision right away if there is no disagreement. You only have a limited number of days to respond to a Motion for Summary Judgment. If the debt collector sends you a Motion for Summary Judgment, talk to a lawyer right away.

The important thing to remember is that if a debt collector contacts you or serves you with a lawsuit, you have rights and options for what you can do. The longer you wait, the less options you may have. Talk to a lawyer right away if a debt collector contacts you or sues you for a debt.

What can I do if someone took my exempt income or property?

You only have 10 business days after someone takes exempt income or property to file court paperwork to ask for it back. You will need to file a Notice of Claimed Exemption. You can download a Notice of Claimed Exemption just below the Take Action section.

How do I get more help?

Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:

- Apply anytime online at mtlsa.org;
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited).

What help can I find at MLSA?

- Legal advice and representation;
- Referrals to volunteer attorneys and other providers;
- Self-help clinics and materials.

www.MontanaLawHelp.org

Need legal information or forms? Visit www.MontanaLawHelp.org.

Can't find what you want? Use LiveHelp. Click on the LiveHelp picture and get help finding the information you need.

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.