



Judgments: How to Claim Exemptions and Request a Hearing

Note: A creditor or debt collector who has a judgment can take some money from you to pay the judgment. There are limits on what kind of money a creditor can take. You can use this packet of instructions and a form to get money back if the creditor was not supposed to take it.

These instructions and form may not be right for your case. They cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Do not change this form. If you change the form, you might lose language you need.

What form will I need?

You only need one form. The form is after these instructions. The form begins on page 12 of this packet.

Who can use this form?

You can use this form if:

- ✓ A creditor or debt collector sued you in court;
- ✓ The creditor or debt collector got a judgment against you in court; **AND**
- ✓ Some of your exempt income was taken to pay the judgment.
- ✓ This form is for the most common ways that creditors or debt collectors enforce their judgments, wage garnishment through your employer and levies on your bank account.

Read these instructions to find out if any of your income might be exempt from being taken to pay a judgment.

Important: If the creditor has taken your money, you must claim your exemptions **within 10 business days** after notice of the seizure was mailed to you or delivered in person to you. Business days do not include weekends or legal holidays.

Note: This form will **NOT** make the judgment, or your debt go away. This form will only allow you to get exempt income back after a creditor or debt collector has taken it to pay the judgment.

What is a judgment?

A creditor or debt collector can sue you in court for an unpaid debt, in order to get a judgment against you. A **judgment** is a court order saying that you owe a certain amount of money. The creditor or debt collector can take your income to pay the debt. If you ignore the lawsuit, the court can enter a judgment against you without hearing your side of the story. This is called a default judgment. You should always respond to a debt collection lawsuit—you do not need an attorney to file your response and appear at the hearing.

Once a creditor or debt collector has a judgment, they can execute that judgment to pay your debt.

How does a creditor “execute” on a judgment?

A creditor or debt collector who gets a judgment can then execute or enforce the judgment against your income, to pay your debt. The most common way for a creditor or debt collector to execute on a judgment are:

- **Wage Garnishment:** The creditor can send the judgment to your employer. Your employer must withhold some of your paycheck to pay the creditor, except for any amounts that are exempt.

- **Account Levy:** The creditor can send the judgment to your bank. The bank must pay the creditor with any money in your accounts. This includes any bank account with your name on it.

What does it mean when income is exempt?

Your income or property might be “exempt.” Certain types of income and property are exempt under Montana law. This means that if the creditor or debt collector takes it to pay your debt, you might be able to get it returned to you

Important: Exemptions are **NOT** automatic. You must **CLAIM** any exemptions through the court. If you do not claim any exemptions, nothing will be exempt! To claim exemptions, file the “Claim of Exemptions and Request for Hearing” form with the court. This form starts on page 11 of this packet.

❖ What Income May Be Exempt?

Note: The following income exemptions do **NOT** apply to garnishment for child support or spousal maintenance orders. Different limits apply to garnishment for child support and spousal maintenance.

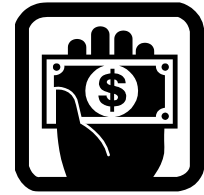
When a creditor takes money from your paycheck to pay a debt it is called “garnishment.”

➤ **Wage Garnishment**

Some or all of your paycheck may be exempt from garnishment. How much you earn determines if your paycheck is exempt from garnishment.

Step One: Determine your “disposable earnings.”

The amount of money that can be garnished from your wages is based on your disposable earnings. **Disposable earnings** are your earnings **after** mandatory withholdings from your paycheck, such as Social Security, Medicare, or FICA, and state withholdings.



In order to figure this out, you need to have a paystub.

○ Example:	Total earnings on paystub: \$700
—	<u>Social Security/Taxes: \$180</u>
	Disposable earnings: \$520

Step Two: Convert disposable earnings to a weekly amount based on how often you are paid.

Once you have figured out your disposable earnings from your paystub, use your disposable earnings calculated above to determine your **weekly** disposable earnings. To do this you need to know how often you are paid; weekly, every two weeks, once a month, or twice a month.

Step Three: Determine if your weekly disposable earnings are exempt.

There are two ways that some or all of your weekly disposal earnings can be exempt.

- 1) **\$217.50 of your weekly disposable earnings is always exempt.**
- 2) **A creditor can never take more than 25% of your weekly disposable Earnings**
 - If you make less than \$217.50 in weekly disposable earnings **ALL** of your earnings are exempt. A judgment creditor cannot

garnish your paycheck.

- If you make more than \$217.50 in weekly disposable earnings, a judgment creditor may be able to garnish your paycheck. In order to find out exactly how much can be garnished from your paycheck, you can run the calculation on this garnishment calculator: <https://montanadebtoptions.org/calculator>The judgment creditor can never take more than 25% of your weekly disposable earnings.
- Let's say your disposable earnings were \$520.00 and you get paid weekly. You always get to keep at least \$217.50. If you subtract \$217.50 from \$520.00 that leaves \$302.50 as income that could be garnished. You also need to look at 25% of \$520.00, which is \$130.00. The law says the creditor has to take whichever is less, your weekly disposable income minus \$217.50 (\$302.50) or 25% of your weekly disposable income (\$130.00). Here, \$130 is less than \$302.50. The creditor can only take \$130.00 per week.
- Your disposable earnings are \$520, but this time you get paid every two weeks. If you are paid every two weeks, you need to divide your disposable earnings by two to get your weekly disposable earnings. \$520 divided by 2 is \$260. If we subtract \$217.50 from \$260 we get \$42.50. 25% of \$260 is \$65. This time when we look at the numbers your weekly disposable earnings minus \$217.50 (\$42.50) is less than 25% of your weekly disposable earnings (\$65). The creditor can only take the lower amount of \$42.50 a week or \$85 a paycheck.
- If you are paid once a month you have to convert your disposable earnings to a weekly basis. This means you have

an extra step. If you get paid once a month the extra step is to divide your disposable earnings by the number of weeks in a month. There are 4.33 weeks in a month. Let's say your disposable earnings for a month are \$2,251.60. If we divide \$2,251.60 by 4.33 we get \$520. If your monthly disposable earnings are \$2,251.60 then your weekly disposable earnings would be \$520.00. Now that you know your weekly disposable earnings you can figure out how much per week can be taken. If you want to know how much per pay check can be garnished, multiply the weekly amount by 4.33. We know if your weekly disposable earnings are \$520.00 the creditor can take \$130.00 a week since we figured that out before. Then we just multiply the weekly amount by 4.33. $\$130.00 \times 4.33 = \562.90 . If you have \$2,251.60 in disposable earnings and get paid once a month, then \$562.90 can be taken out of your paycheck.

- If you get paid two times a month, there is one more step you have to do. You know you get paid twice a month if the days of the month you get paid on are always the same. For instance, you might get paid on the first and the 15th of the month every month. After you figure out your disposable earnings from your paystub you have to multiply that number by two. Multiplying by two will tell you your monthly disposable earnings. Let's say you get paid twice a month and have \$1,125.80 in disposable earnings from one paycheck. You multiply your disposable earnings by two. $\$1,125.80 \times 2 = \$2,251.60$ in disposable earnings a month. Divide that by 4.33 to get your disposable earnings per week, which is \$520.00. We already figured out that if you make \$520 a week in disposable earnings that means the creditor with the judgment can take \$130.00 per week, or \$562.90 a month. Remember that the monthly amount is the

weekly amount multiplied by 4.33. If we want to know how much can be taken from each paycheck, we have to divide the monthly amount by two since you get two paychecks a month. \$562.90 divided by 2 is \$281.45. So, if you have \$1,125.80 in disposable earnings and get paid twice a month, then \$281.45 can be taken out of each paycheck.

REMEMBER: A creditor cannot garnish more than 25% of your weekly disposable earnings.

25% of your weekly disposable earnings is the maximum amount a judgment creditor can ever garnish your paycheck. If your check is being garnished for more than 25% of your weekly disposable earnings, it is a good idea to speak with your employer and/or seek legal advice.

➤ **Bank Account Levy**

You may be able to claim some or all of the money in your bank account as exempt after the creditor or debt collector takes it. Where the money originally came from determines if the money is exempt.

Money that comes from these sources is exempt:

- **Unemployment or public assistance benefits**
 - ✓ Unemployment insurance benefits
 - ✓ SSI and SSDI
 - ✓ Local public assistance benefits (ex: TANF)

- **Child support or spousal maintenance**
 - Child support

- Spousal maintenance
- ✓ **Retirement or veteran benefits**
 - Social security benefits
 - Exempt except for back child support or maintenance
 - Veterans' benefits
 - Exempt except for back child support or maintenance
 - Certain retirement benefits are also exempt
- **Income or assets related to an injury, illness, or disability**
 - Insurance benefits paid for medical care, surgery, or hospital care
 - Worker's compensation benefits
 - Social Security Disability benefits
 - Exempt except for back child support or maintenance
 - Other disability or illness benefits
 - Exempt except for back child support or maintenance
- **Some or all of your wages**
 - ✓ \$217.50 of your weekly disposable earnings is always exempt
 - ✓ 25% of your weekly disposable earning is the most a judgment creditor can take from your paycheck
 - If a judgment creditor takes more than this amount from your bank account, you can ask for the exempt amount back

How do I use this form?

1 Figure out your exemptions

- Use the “above calculation instructions to figure out whether your income or property might be exempt.

2 Fill in the form

- For each exemption you want to claim, do you have copies of paystubs and bank statements? Circle “Yes” or “No” in the far-right column to let the court know what documents you are attaching to your form.
- Fill in the date.
- Sign the form. Below your signature, print your name to make sure the court can read it.
- Attach the copies of paystubs, bank statements and other papers to the form, but be sure to redact any private information, such as SSNs or full account numbers.

3 Fill in the certificate of mailing

- Fill in the Certificate of Mailing with the addresses of the creditor or debt collector and levying officer or sheriff who processed the garnishment or levy.
- Fill in the date.
- Sign the Certificate of Mailing. Below your signature, print your name.

4 Make copies of the form and any documentation

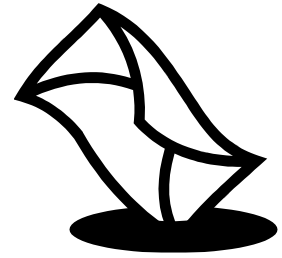
- Make FOUR copies of the form and any documentation you are attaching.

5 File the form with the court

- Take all four copies to the Clerk of Court’s office for the court that issued the judgment against you. This information is on the front page of the judgment.
- Ask a clerk to file the original form and “**conform**” the three copies. This means the clerk keeps the original and stamps the three copies to show when the original was filed. The three copies will be given back to you.

6 Mail copies to the creditor and the sheriff

- Right after you file the form, you must mail one “conformed” copy to the levying officer or sheriff who took the money or property and one to the creditor or debt collector.
- Keep your copy of the form in a safe place.



What happens next?

Montana law says the court must conduct a hearing within 10 days of when you file the Notice of Claimed Exemption. You will get a notice in the mail telling you the time and date of your hearing. You **MUST** attend the hearing. Bring copies of any recent paystubs, bank statements, and other papers to prove your income or property is exempt.

Where can I get more information?

The laws of Montana are called the Montana Code Annotated or “MCA.” The laws about claiming certain property as exempt from execution are found in the MCA at Title 25, Chapter 13, Section 212, Section 608, and Section 614. An easier way to write that is: § 25-13-212, MCA, § 25-13-608, MCA, and § 25-13-614, MCA. The symbol § means section. You can find the MCA at your local library or on the Montana State Law Library website at courts.mt.gov/Library/mr/. Click on the “Legislative Branch” tab and look for “Current Montana Code Annotated.”



Where Can I Get Legal Help?

These organizations may be able to help you:

- **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, apply online at www.mtlsa.org, or call the MLSA HelpLine at 1-800-666-6899.
- **The State Bar Licensed Lawyer** website refers people to Montana lawyers who might be able to help. <https://www.licensedlawyer.org/mt>.

The State Law Library can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at courts.mt.gov/Library/. You can contact a Reference Librarian at 406-444-3660 or by email at mtlawlibrary@mt.gov.

(Your Name)

(Your Address)

(City) (State) (ZIP)

(Your Phone Number)

Defendant

Justice Court of _____ **County,**
(Name of County)

OR

(Number) **Judicial District Court** _____ **County,**
(Name of County)

State of Montana

<p>_____ Plaintiff(s) (Creditor),</p> <p>vs.</p> <p>_____ Defendant(s)(Debtor, Your Name)</p>	<p>Cause No. _____</p> <p>Claim of Exemption and Request for Hearing</p>
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I ask this Court to schedule a hearing in my case to consider whether my income is exempt from the Plaintiff's judgment. Under § 25-13-212 MCA, The hearing must be within ten days of the date the Court receives this request.

I am also giving the Court a written statement of the exemptions I am claiming and the reasons. If I have documentation for an exemption, it is stapled to this request.

STATEMENT OF CLAIMED EXEMPTIONS AND REASONS

Check if Exempt	Income/Property	Reason <i>(check all boxes that are true)</i>	Documentation Attached? <i>(circle one)</i>
<input type="checkbox"/>	Money in my bank account(s)	Exempt because it is from: <ul style="list-style-type: none"> <input type="checkbox"/> My weekly earnings, wages or paycheck. 75% of my weekly disposable earnings is exempt. The execution cannot apply to more than 25% of my weekly disposable earnings <input type="checkbox"/> My weekly earnings, wages or paycheck. The execution cannot apply to my earnings at all because my weekly disposable earnings are \$217.50 or less (30 times the federal minimum hourly wage) <input type="checkbox"/> Unemployment benefits <input type="checkbox"/> Social Security/SSI <input type="checkbox"/> TANF <input type="checkbox"/> Child support/maintenance <input type="checkbox"/> Veterans' benefits <input type="checkbox"/> Retirement benefits <input type="checkbox"/> Worker's compensation <input type="checkbox"/> Medical/disability benefits 	Yes / No
<input type="checkbox"/>	Paycheck or other earnings (before the money is deposited in an account)	Exempt because: <ul style="list-style-type: none"> <input type="checkbox"/> 75% of my weekly disposable earnings is exempt, and the execution cannot exceed 25% of my weekly disposable earnings <input type="checkbox"/> my disposable weekly earnings are \$217.50 or less 	Yes / No

(Write the date you file this)

(Sign your name here)

(Print your name here)

CERTIFICATE OF MAILING

I sent the Plaintiff(s)/Creditor(s) and Process Server or Sheriff copies of everything I am filing with the Court: *(Check the boxes of everything that you are sending)*

- Claim of Exemptions and Notice of Hearing
- Statement of Claimed Exemptions and Reasons
- Any documentation for exemptions I am claiming

The address I used for the Plaintiff(s) was:

Name: _____
(Creditor's Name)

Address: _____
(Creditor's Address, first line)

City, State, Zip _____
(Creditor's Address, second line)

The address I used for the Levying officer or Sheriff was:

Name: _____
(Levying officer or Sherriff's Name)

Address: _____
(Levying officer or Sherriff's Address, first line)

City, State, ZIP _____
(LEvying officer or Sherriff's Address, second line)

Today's Date: _____
(mm/dd/yyyy)

My Signature: _____
(Sign your name)

Printed Name: _____
(Print your name)