

Montana Legal Services Association

What is an Account Levy?



Providing, protecting, and enhancing access to justice.

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What is an Account Levy?

If you owe a debt in Montana, this article will help you:

- Learn what money is protected from debt collection
- Download a free court form to ask for your protected money back.

Summary

A **levy** is when someone collects on a judgment by taking money from your bank account.

Someone can only take money from your account with a court judgment. That means they have to sue you first, and win in court. Some debts owed to the federal government, like the IRS, do not need a court judgment to levy your account, but these are rare. Most often, it is a debt collector or creditor who takes money from your account. If the money from your account is from **exempt income**, you only have 10 business days after you get notice to file court paperwork to ask for it back.

This article will help you learn what exempt income is, and what you can do if someone takes it from your account. You may also download our court form at the bottom of this page to file it with the Clerk of Court to ask for your exempt income back.

The rules for when someone may take money from your account are complicated. It is helpful to know a few legal terms when figuring out if someone may take money from your account to pay off a debt.

Account Levy

A **levy** is when someone collects on a judgment by taking money from your bank account. A creditor with a judgment can send their judgment to your bank or credit union. Your bank or credit union must respond to the levy and turn over any funds available in your account. The bank or credit union does not determine whether your funds are exempt. **It is up to you to claim any funds that are exempt within 10 business days that you get notice of the levy.** To do this, you must file paperwork with the court within 10 business days of the levy, asking the court to order the exempt funds returned to you.

There is a special rule that applies to direct deposits of certain federal funds into your bank account from the United States Department of Treasury. For example, Social

Security, SSI, VA Benefits and certain other federal benefits fall under this rule. Under this special rule, your bank must find out if any of these exempt federal funds have been electronically deposited into your account within the past two months. If they have, the bank must protect whatever amount was deposited during that time period.

Any bank account with your name on it, where you have access to the funds in the account, can be levied to pay your judgment. If you have joint accounts with other people, it is a good idea to talk to a lawyer to determine how best to protect the funds in the account.

We have information below for when your account has a mix of exempt income and non-exempt income, but it is still a good idea to talk to a lawyer.

Wage Garnishment

Wage garnishment is when someone collects on a judgment by taking money directly from your paycheck. This article only covers bank account levies. If someone is garnishing your wages, read our article [What is a Wage Garnishment?](#)

Exempt Income

When the law protects certain income and property from debt collection it is **exempt** from collection on a judgment. This means that even if a creditor or debt collector sues you in court and wins, they should not collect the judgment by taking your exempt income or property.

Notice of Claimed Exemptions

A Notice of Claimed Exemptions is the court paperwork that you can download at the bottom of this page and file with the Clerk of Court to ask for your protected money back.

What income is exempt?

Some or all of the money in your bank account(s) may be exempt, depending on where the money came from. Money in your bank account(s) from any of these sources is exempt:

- Unemployment or public assistance benefits
 - Unemployment insurance benefits
 - Federal Social Security (SSI and SSDI)
 - Local public assistance benefits (TANF)

- Local tax credits
- Child support or spousal maintenance (alimony)
 - Child support
 - Spousal maintenance (alimony)
- Retirement or veteran benefits
 - Social security benefits
 - Veterans' benefits
- Other retirement benefits may also be exempt
 - Talk to a lawyer if you aren't sure if your retirement benefits are exempt
- Income and property 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
- Other disability or illness benefits may be exempt
 - Talk to a lawyer if you aren't sure if your disability or illness benefits are exempt
- Part of your wages

You'll need to figure out how much of your wages are exempt. Keep reading to learn more. Bills that you have to pay, like rent, utilities, and medical bills are not factored into how much a debt collector may take from your account. The only thing that matters when figuring out how much a debt collector may take from your account is **where the money came from**.

How to Get Exempt Income Back

You only have 10 business days after you get notice that your bank account has been levied to file a Notice of Claimed Exemptions to ask for it back.

To get exempt income back, you must:

1. Make sure the form is right for you.
2. Figure out how much of the money taken from your account is exempt.
3. Complete the court forms and make copies.
4. File the forms with the court.
5. Attend your hearing and get legal help.

Step One: Make sure the form is right for you

The free court form that you can download from this web page may be right for you if:

- You live in Montana,
- All or some of the money in your account is exempt, and
- It has been less than 10 business days since you got notice that someone took money from your account.

Different states have different laws. The information and forms on this website only work in Montana. If your account is located outside of Montana, find legal help in another state.

Step Two: Figure how much in your account is exempt

If all the money in your account is from an exempt source, then all the money in your account is exempt. You can scroll back up to see the list sources of exempt income. The form at the bottom of this article will help you figure out how much of your account is exempt.

When only some of your money is exempt

You might have money in your account from exempt sources, and some from non-exempt sources. For example, you might have money from child support and some from your paycheck.

Part of your wages are exempt as well. The law bases how much of your wages may be garnished on your weekly **disposable earnings**. Disposable earnings are 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

The law in Montana protects the following amounts of your wages from garnishment:

- No garnishment is allowed if your weekly disposable earnings are less than \$217.50 per week.

- If your weekly disposable earnings are more than \$217.50 but less than \$290.00, only the amount over \$217.50 can be garnished.
- If your weekly disposable earnings are more than \$290.00, no more than 25% of those earnings can be garnished.

If you get paid bi-weekly, semi-monthly, or monthly, the calculation works a bit differently than described above.

Important: A debt collector cannot double dip on the same paycheck. So, they cannot garnish your wages and then take the money left over from that paycheck from your account. Usually, if your wages are being garnished, the money in your account from your paycheck is exempt.

Important: Any money that you have in your account that is not exempt can be taken, even if it is not technically yours. For example, if you and your daughter split the cell phone bill and she deposits \$50 into your account every month, that \$50 can still be taken because it is not exempt.

Finding out how much money in your account is exempt is complicated. The court form on this website includes a worksheet to help you figure out how much of your money is exempt.

Step Three: Complete the court forms and make copies

The form for the Notice of Claimed Exemptions that you can download at the bottom of this page includes instructions. Read through those instructions carefully before you begin filling them out.

You'll need some documents to show the court that your money is exempt. You will need to attach these documents to your court paperwork. That might be:

- Paystubs
- Bank statements
- Other papers showing what income and how much you get that is exempt

Once you gather documents to show your money is exempt, you'll need to:

- Make four copies of each document.
- Make four copies of the completed court forms.

Step Four: File the court forms and serve the other parties

You only have 10 business days after getting notice that someone levied your account to file the Notice of Claimed Exemptions with the Clerk of Court.

You must file the Notice of Claimed Exemptions with the Clerk of Court where the original judgment came from. You would use the same case number as the lawsuit where the debt collector sued you and got the judgment.

You'll also need to mail a copy of your Notice of Claimed Exemptions to the debt collector and the levying agent. The debt collector is the one who sued you, and was named as the Plaintiff in the original lawsuit. The levying agent is the one who actually took the money from your account, to give to the debt collector. You can ask your bank or credit union if you're not sure who the levying agent is.

You may need to pay a filing fee to file your Notice of Claimed Exemptions. If you cannot afford the fee, learn how you can ask the court to waive the filing fee.

Step Five: Attend your hearing and get legal help

The court must conduct a hearing within 10 days after you file your Notice of Claimed Exemptions. The court will notify you about the hearing using the contact information that you put in your paperwork. Make sure you use a reliable phone number and mailing address.

You must attend the hearing that the court schedules. At the hearing, you will have the burden of proof to show that the money taken from your account is exempt. The best way to show that your money is exempt is by using your documents, like account transaction history and pays stubs. You can explain where the money from your account came from. You do not get to bring up other issues like if you really do owe the debt or if it is fair to you.

During the hearing, the judge and the debt collector's lawyer may ask you questions. The debt collector's lawyer may ask you questions to try to show why the money isn't exempt.

It is a good idea to talk to a lawyer right away. Talking to a lawyer before your hearing may help you prepare.

Montana Legal Services Association (MLSA) provides free legal help to low-income Montanans. The only way to find out if MLSA can help you is for you to apply. It may take MLSA more than a week to complete your application, so you may not get a chance to talk to a lawyer before your hearing. It is helpful for you if you put any court deadlines or hearings in your application to MLSA. Even if you can't talk to a lawyer before your hearing, a lawyer may still help you with advice on your situation. Learn more about how to apply for free legal help from MLSA.

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 icon and get help finding the information you need.

www.MTLA.org

Find copies of all our brochures online.

They are all available for free download!

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.