



CONSUMER RESOURCES

All laws are subject to change without notice. This information is based on Florida law only and is NOT intended to be legal advice.

GARNISHMENT

What happens first?

1. Judgment is entered against you for a certain amount of money.
2. For whatever reason, the judgment is not paid.
3. Because the judgment was not paid, creditors will try to collect the money judgment. Creditors can try to collect the money three ways:
 - a. *Home*: If you own the home you live in, your home is protected from all creditors except those holding a mortgage or lien on your property. You can exempt and protect your home and up to one-half acre of land from any forced sale if you live in an incorporated area. This includes mobile homes. If you live in an unincorporated area, you can protect up to 160 acres as homestead property.
Under most circumstances, a lien cannot be placed on your home for a debt. However, creditors who loan you money to buy, improve, or repair your home may put a lien on your home.
 - b. *Car*: Your interest in a vehicle is exempt up to \$1,000 of its value. This means that your vehicle cannot be taken to satisfy a judgment unless the value of the car, less all debts for which the vehicle is collateral, is greater than \$1,000. If a judgment creditor or sheriff takes your vehicle under an execution and its value to you is \$1,000 or less, you can apply to the court for recognition of your exemption and request the return of your vehicle. Your affidavit of exemption should be filed with the court and the sheriff.
 - c. *Bank accounts, wages, etc...*: See process described below.

Exemptions to garnishment:

4. If the creditor wants to garnish you, you will get a notice. This notice is called a *writ of garnishment*. A Notice of Right against Garnishment will be attached to the writ of garnishment.
 - a. There are exemptions that may be entitled to you. State and federal laws provide that certain wages, money and property, even if deposited in a bank, savings and loan, or credit union, may not be taken to pay certain types of court judgments. Such wages, money, and property are exempt from garnishment.
5. In order to use the exemptions, you must file a Claim of Exemption and Request for Hearing *within 20 days* of receiving your Notice of Right against Garnishment. The Claim of Exemption and Request for Hearing forms will be included with your Notice of Right against Garnishment. You must also mail or deliver a copy of your Claim of Exemption and Request for Hearing to the Plaintiff listed on the writ of garnishment. You can only file a Claim of Exemption and Request for Hearing *if you qualify*.
 - a. Terms you should know:
 - i. *Head of the Family* includes any person who is providing more than one-half of the support for a child or other dependent.

Jacksonville Area Legal Aid
126 W. Adams St.
Jacksonville, FL 32202
904-356-8371



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- ii. *Disposable earnings* are the part of the earnings of any head of family that remain after the deduction from those earnings of any amounts required by law to be withheld.
- iii. *Earnings* include compensation paid or payable, in money of sum certain, for personal services or labor whether denominated as wages, salary, commission, or bonus.
- b. The following are wages that may qualify you to be exempted from garnishment:
 - i. You are the head of family and provide more than one-half of the support for a child or other dependent and have net earnings of \$750 or less per week.
 - ii. You are the head of family and provide more than one-half of the support for a child or other dependent, have net earnings of more than \$750 per week, but have not agreed in writing to have my wages garnished.
 - iii. Social Security Benefits
 - iv. Supplemental Security Income Benefits
 - v. Public Assistance (Welfare)
 - vi. Workers' Compensation
 - vii. Unemployment Compensation
 - viii. Veterans' benefits
 - ix. Retirement or profit sharing benefits or pension money
 - x. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract
 - xi. Disability income benefits
 - xii. Prepaid College Trust Fund or Medical Savings Account
- c. The above exemptions that are deposited in any financial institution are exempt from attachment or garnishment for 6 months after the earnings are received by the financial institution if the funds can be traced and properly identified as earnings.

If you qualify for an exemption to garnishment, you should:

6. File your Claim of Exemption and Request for Hearing *within 20 days* of receiving your Notice of Right against Garnishment as mentioned above.
7. To fill out the form (see blank sample below) you should:
 - a. Copy the case number and the name of the Plaintiff and Defendant from other Court papers you have in this case.
 - b. Place a check mark next to the exemption(s) you feel you qualify for. You should check all that apply.
 - c. Provide a mailing address and telephone number where the Court can reach you to give you the date for your hearing.
 - d. DO NOT SIGN until you are with a notary. Most banks offer a notary service for free or a small fee.
 - e. After you have signed the form and had it notarized, you need to make two copies.
 - f. The ORIGINAL needs to be filed at the courthouse. For Duval County, take the form to the Clerk of Court's office in the courthouse at 501 West Adams Street, Jacksonville, FL. There is no charge for filing this form.

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- g. You should also take one COPY with you to the Courthouse so that the clerk can stamp it for your records. You should keep that copy.
 - h. The second copy needs to be mailed to the attorney for the Plaintiff with regular US Mail. You do not have to send it via certified mail.
8. You then will need to wait to hear back from court regarding time and date of hearing.
9. To prepare for your hearing, you should:
- a. Know which exemption(s) you are claiming
 - b. Have proof for each exemption claimed
 - i. Examples of proof:
 1. An affidavit describing your home and claiming it as your homestead
 2. Recent year's tax return documents
 - c. At the hearing, the Judge will swear you in under oath (meaning you swear to tell the truth) and ask you questions about why you think you qualify for the exemption.
 - d. If the Judge agrees with you, he/she will write an Order giving you the exemption and that Order will be mailed to you, the Plaintiff, and your employer or bank. When the Order is processed by the employer or bank, the garnishment will be stopped.



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SAMPLE FORM

IN THE COUNTY COURT FOR THE 4TH JUDICIAL
CIRCUIT IN AND FOR DUVAL COUNTY,
FLORIDA

Plaintiff

v.

Defendant

v.

Garnishee

_____ /

Case Number: _____

Division: _____

CLAIM OF EXEMPTION AND REQUEST FOR HEARING

I claim exemptions from garnishment under the following categories as checked:

- ___ 1. Head of family wages. (You must check a. or b. below.)
 - ___ a. I provide more than one-half of the support for a child or other dependent and have net earnings of \$750 or less per week.
 - ___ b. I provide more than one-half of the support for a child or other dependent, have net earnings of more than \$750 per week, but have not agreed in writing to have my wages garnished.
- ___ 2. Social Security benefits.
- ___ 3. Supplemental Security Income benefits.
- ___ 4. Public assistance (welfare).
- ___ 5. Workers' Compensation.
- ___ 6. Unemployment Compensation.
- ___ 7. Veterans' benefits.
- ___ 8. Retirement or profit-sharing benefits or pension money.
- ___ 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.
- ___ 10. Disability income benefits.
- ___ 11. Prepaid College Trust Fund or Medical Savings Account.
- ___ 12. Other exemptions as provided by law.

_____ (explain)

I request a hearing to decide the validity of my claim. Notice of the hearing should be given to me at:
Address: _____

Telephone number: _____

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The statements made in this request are true and based on my personal knowledge and belief.

Defendant's signature

Date

STATE OF FLORIDA
COUNTY OF DUVAL

Sworn and subscribed to before me this _____ day of _____ 2011 , by
_____(defendant).

Notary Public/Deputy Clerk

Personally Known _____ OR Produced Identification____

Type of Identification Produced _____

(Seal)