

MORE INFORMATION

Below are some resources that you may find useful in your search to reclaim your exempt funds:

- www.MontanaLawHelp.org – They provide a packet to help guide you through the process of retrieving exempt funds (as mentioned on the inside of the brochure). They also have many other packets that cover a wide range of legal issues to help people who can't afford a lawyer represent themselves. All the documents are free and usually include step by step instructions developed by lawyers.
- Montana Legal Services Association - www.MTLA.org - MLSA is a program that provides free legal assistance in civil cases to low-income people.
- The State Law Library of Montana - www.courts.mt.gov/library - The Law Library allows users access to resources on legal issues (but not legal advice). The librarians are trained in legal research so that they may help you select, locate, and use legal materials that will, hopefully, enable you to answer your own legal questions.

IMPORTANT NOTE:

The information provided in this brochure is a guide to help the user understand the process of reclaiming exempt funds that might be wrongfully taken in a judgment; it is not meant to be legal advice. To receive legal advice about reclaiming exempt funds that might be wrongfully taken in a judgment, consult an attorney.

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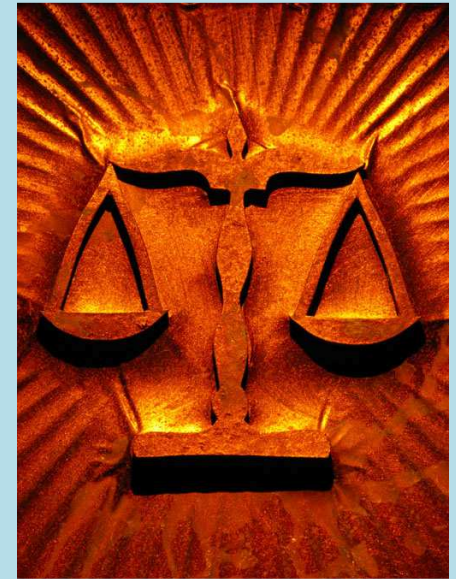
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Reclaiming Exempt Funds

Getting back money that may be wrongfully taken in a judgment



The State Bar of Montana

Providing information and educational material for the public as to the rule of law in a civilized society, the legal rights and responsibilities of an individual, and the workings of the legal system.

CAN MONEY BE TAKEN OUT OF YOUR BANK ACCOUNT?

A creditor may be allowed to take funds from your account due to a **judgment**, but there are some funds that are exempt from this garnishment.

There is only a certain amount a **creditor** can take from your wages. The most a creditor may take from your weekly disposable income is 25%. Also, \$217.50 of your disposable income is always exempt.

Other income sources may also be exempt. Some examples are:

- Unemployment or public assistance benefits like Social Security, LIEAP, and unemployment insurance
- Child support and spousal maintenance
- Retirement or veteran benefits
- Income from an injury illness, or disability

You can see a full list of exempt funds in the Montana Code Annotated (MCA) in section 25-13-608. You can find the MCA at your local library, the State Law Library of Montana, or online:

- http://data.opi.mt.gov/bills/mca_toc/index.htm

THE FORMS

Once you receive a **notification of seizure** that money is going to be taken, you have only 10 days to **file** your **claim of exemption** with the court.

First, fill out forms [Claim of Exemption and Request for Hearing](#) along with [Statement of Claimed Exemptions and Reasons](#).

These forms can be found by going to:

- www.MontanaLawHelp.org
- Click the *consumer* link on the main page
- Then **[Debt Collection, Garnishment, and Repossession](#)**
- Finally, click to open **[Judgments: How to Claim Exemptions and Request a Hearing](#)**

There are directions at the beginning which may be helpful, and the forms are at the end.

PREPARING TO FILE

Along with the filled out forms, you need to make sure you file the proof that this money is legally exempt from seizure, and should not be allowed to be taken from you. Use the calculations provided you on the [www.MontanaLawHelp.org](#) packet to determine if too much of your pay check is being garnished.

Make sure to provide all of your bank statements, benefit statements, and pay stubs. Most benefit programs and businesses should be able to provide you with any missing documentation upon request. Failure to attach documents proving your claim may result in your request being denied. The documents need to be attached at the time you file the claim, not afterwards.

FILING

Make three copies of all of your papers including the forms and financial statements. File the **original motion** and supporting documents with the clerk of court in the county where the court that issued the **writ** is located.

On the same day you must send another copy to your creditors or your creditors' attorneys. To do this mail the copy to the creditor or creditors attorney using the [U.S. Postal Service](#). Before you file with the court, contact the attorneys your creditor used in the previous judgment to find out if they will return your exempt funds without a hearing and to what address you should send the copy of your court filing.

YOUR HEARING

If everything was filed correctly the court will send a letter called an **Order**. It will inform you of the date and time of the hearing.

Here are some general rules to help you on the day of your hearing:

- Show up a little early on the day of your hearing to provide extra time in case of an emergency.

- You will also want to have all of the documents you filed and received for this hearing with you.
- Make sure to dress appropriately for your hearing. A good rule is to wear clothing you would if you were going to church. Make an effort to steer clear of t-shirts and jeans.
- Make sure to present yourself in a calm manner. This means keeping an even tempered tone and refraining from cursing.
- Address the Judge as "Your Honor" and the other parties as "sir" or "ma'am".
- Only speak when addressed and do not interrupt.
- If there is a discrepancy between your accounts and your creditors, simply ask the judge "May I respond?" to explain your account of the issue.
- Just explain to the judge that exempt funds were or will be taken from your bank account.

GLOSSARY

Judgment- decision made by a court following a lawsuit.

Creditor- A person or institution that is owed money.

Notification of Seizure- letter from the court informing you that money is going to be taken

Claim of Exemption- document declaring a creditor may not take money because the funds are protected by the law.

Original Motion- The forms provided by www.MontanaLawHelp.org that are suggested to be used by this brochure.

Writ- the document that declares a judgment.

File or Filing- to submit a document to the clerk of court for immediate consideration or storage in the court's files.