

How To Handle Debt Problems



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If you do not pay your debts, your creditors might try to force you to pay them. A debt collector might call you or send you letters demanding that you pay the debt. Or your creditor might sue you. If You Are Sued in Court for a Debt Consult a lawyer immediately! You may qualify for a Legal Aid attorney.

You may raise claims and defenses that you have to the lawsuit, but there are time deadlines to do so. Most claims or defenses must be in writing and filed with the court. If you lose, the Judge will enter a judgment against you. Then your creditor may try to collect its judgment by “attaching” your property or “garnishing” your wages or bank account. However, both Missouri and federal law protect some of your property and income from creditors.

If garnished, you must file an affidavit at the Courthouse to “claim your exemptions” to protect your property. There is a time deadline to do this! If sued, you should consult an attorney as to your legal rights and remedies, and whether to file bankruptcy.

Some Property May be Taken without a Court Judgment

Although a creditor usually must have a court judgment before it can take your property to satisfy a debt, this is not always true. For example:

Car Loan.

If you are buying a car and your lender has a lien, it may repossess without a court judgment and sell your car if you fall behind in your payments. If your lender does not sell the car for enough to pay the debt and the costs of the sale (which often happens) you may still owe a large debt after the car is sold.

Home Loan.

In Missouri, if you are behind in your home mortgage payments, your home can be sold at a foreclosure sale. No court hearing is needed.

Student Loan.

If you are in default on a federally guaranteed student loan, your income tax refund may be taken and/or 10% of your take-home wages garnished to pay this debt.

Filing for Bankruptcy Can Stop Debt Collection

Filing a petition in bankruptcy can stop a garnishment, a foreclosure sale, or other actions to collect debts. For advice on whether a bankruptcy could help you, consult a lawyer without delay!

What Property Can I Protect From a Creditor Who Gets a Court Judgment Against Me for an Unpaid Debt?

If a court judgment is entered against you, your creditors might be able to take some of your property or income to pay the judgment. However, your creditors cannot take some Missouri property and income, including:

Property

\$15,000 equity in a homestead (your house and related land);

\$3,000 equity in an automobile;

\$600 in other property or cash; If you are the head of a family, an additional \$1,250, plus \$350 for each unmarried, dependent child under 18;

\$3,000 in household goods, clothing, appliances, and certain other property;

\$1,500 in a wedding ring, \$500 in other jewelry, and \$3,000 in books and tools used in your business;

Up to \$750 per month in child support or maintenance (alimony); Any amount in professionally prescribed health aids;

\$5,000 equity in a mobile home if used as your principal residence; and with certain limitations, some life insurance policies and payments.

Income

Government benefits (such as Social Security, S.S.I., unemployment compensation, pensions, TANF, food stamps, General Relief) are protected from most creditors, and usually cannot be garnished. Social Security Disability or VA benefits may be garnished to pay child support or debts you owe the government. However, S.S.I. may not be garnished. If your wages are garnished, you must be left with a minimum of \$154.50 per week (after taxes). If you are the head of the household and work in Missouri, your creditor can garnish a maximum of 10% of your wages, after taxes. If you are not the head of the household, then a maximum of 25% of after-tax wages can be garnished. (Only one person can be the “head” of a household.) More of your income can be garnished to pay child support. This is not a complete list of property protected in Missouri. For specific legal advice, you should consult a lawyer.

Garnishment

You must file an affidavit with the Court to protect wages, bank accounts, or other property that is garnished. In your affidavit, tell the Court what property you claim is protected by law.

If you are the “head of household,” you may protect 90% of your wages.

The \$1,250 head of household and \$600 exemptions may be used to protect cash you have in a bank account.

Most government benefits can be protected even after they are deposited in your bank account if your affidavit explains that the money in your account is from i.e., Social Security benefits.

After you file your affidavit, your creditor may either lift the garnishment or request a court hearing. If your creditor cannot find your bank account, it cannot garnish it. To prevent the garnishment of government benefits in your bank account, often it is best to change banks. There is a time deadline to file your affidavit, or you will lose your protected property. So do not delay!

What Can I Do?

Consult a Lawyer Immediately. You should consult an attorney for advice if you are sued, or if your wages or properties are garnished. Ask if filing bankruptcy could help you.

Call Consumer Credit Counseling Service. It is a non-profit organization that counsels people who owe money, and in some cases negotiates repayment plans with creditors. For more information about their services, call 1-800-355-2227.

Stop Harassment by Debt Collectors

The federal Fair Debt Collection Practices Act protects you from harassment by debt collection agencies. Under this law:

You have the right to contact the collection agency to ask for proof of the debt or the amount of the debt. Until the collection agency gives you this information, it cannot

continue to collect the debt.

You can write to the collection agency to tell it to stop contacting you, and it must do so. (If you write to a collector, be sure to send your letter by certified mail, return receipt requested, and keep a copy of the letter.)

Debt collectors are prohibited from contacting you at certain inconvenient times and places and there are restrictions on who the collector may contact about your debt. You can sue a debt collector who violates this law, but there are time deadlines. For legal advice consult a lawyer without delay.

Notice Prepared by Missouri legal aid lawyers, pursuant to a grant from the Jewish Heritage Foundation through the Mid-America Regional Council. January, 2006. Sometimes the laws change. We cannot promise that this information is always up-to-date and correct. If the date above is not this year, consult with a lawyer or call one of the legal aid programs in your area for possible assistance with your legal problem. We provide this information as a public service. It is not legal advice. We are not acting as your lawyer. Always consult a lawyer, if you can, before taking legal action.

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