

HOW TO TELL A FINANCIAL INSTITUTION THAT YOU HAVE DEPOSITS PROTECTED FROM GARNISHMENT

People who get money from the sources listed below are able to protect some of this money from being sent to a creditor at all (funds not subject to garnishment), or get back money that has been sent to a creditor but, which the creditor may not keep (exempt funds). You need to use different procedures to protect the two categories of money. These instructions cover funds not subject to garnishment.

To qualify as funds not subject to garnishment, both of the following two things must apply.

1. The money must be received by your financial institution by direct deposit or by electronic payment. Therefore, it is always best to do direct or electronic deposit.
2. The money must come from one of the following sources:
 - * Payments from the Social Security Administration, including SSI and SSD;
 - * Public assistance payments from the state or a state agency;
 - * Unemployment compensation payments from the state or a state agency;
 - * Payments from a public or private retirement plan as defined in ORS 18.358;
 - * Veterans benefit payments from the Veterans Benefits Administration;
 - * Workers' compensation payments from a workers' compensation carrier; and/or
 - * Black lung benefit payments from the US Department of Labor.

The amount that is not subject to garnishment is equal to either the balance in your account OR the amount that the sources listed above deposited into your account the month before the garnishment, whichever is LESS. Any money you have over that amount may be sent to the creditor. However, some or all of it may still be exempt so you may be able to get it back. You get it back by doing a Challenge to Garnishment, also known as a Claim of Exemption. For more information on this process see the resources at the end of page 2, speak to a private attorney, or go to www.oregonlawhelp.org.

If you have funds not subject to garnishment you should complete and give your financial institution a copy of the attached Affidavit Notifying Financial Institution of Funds Not Subject to Garnishment. This will help protect your money. You should do this if: (1) a creditor has obtained a court judgment against you, (2) a creditor is suing you in court for a debt, (3) a creditor is threatening to sue you in court for a debt, (4) you are opening a new account, or (5) you generally want to protect your money.

To protect your funds not subject to garnishment follow these instructions:

1. If you think that your income is not subject to garnishment you should fill out the attached Affidavit completely and give it to your financial institution.
 - * Make sure you check off where the money comes from in #4 of the Affidavit.
 - * If you get retirement, pension, or workers' compensation money it is best to tell the financial institution the name of the company that the money comes from in #6 on the Affidavit so that they can easily identify it as being funds not subject to garnishment.
2. Giving your financial institution the Affidavit will tell them your account has money deposited into it that should not be sent to a creditor and is not subject to garnishment. You should give them a new Affidavit if any of the information on it changes.

3. The Affidavit must be signed in front of a notary public. DO NOT SIGN the Affidavit until you are in front of a notary public. By signing the Affidavit you are swearing under oath that everything you say in the Affidavit is true. You will generally need to show the notary an acceptable form of current photo ID. If this is a problem see the resources section below.
4. Make sure you keep a copy of any Affidavit you give your financial institution. It is also a good idea to send a letter to any creditor(s) telling them you have given your financial institution the Affidavit. You should not send a copy of the Affidavit to any creditor(s) trying to collect a debt. Just send any creditor(s) a letter telling them you filed the Affidavit and have protected income.

WHAT TO DO IF YOUR ACCOUNT IS GARNISHED

1. If your account is garnished, and none of the funds in it are subject to garnishment, then a creditor should not get your money and the financial institution can't charge a processing fee.
2. If you have funds that are subject to garnishment this does not necessarily mean the creditor(s) may keep them, but it does mean your financial institution may send your money to the creditor(s). Your financial institution may also charge you a processing fee. If the financial institution sends your money to a creditor(s), and it is exempt or should not have been sent at all, and you want it back, you should file a Challenge to Garnishment right away.

OTHER PROPERTY THAT MAY BE PROTECTED

In addition to protecting your money in bank accounts, you can often protect your wages, money, property and other things you own from being taken by a creditor. There are limits to what is protected. To find out what is exempt read the list of exempt wages, money and property. You should get a copy of this list with any garnishment, but if you don't or if you have not yet been garnished, see the resources below. If all of your money and other assets are exempt you may tell your creditor(s) that you are judgment proof. If all of your assets and income are exempt this means that a debt collector may not keep anything they collect IF you file a Challenge to Garnishment on time and go through the procedure. There is no court fee to file a Challenge. Sometimes if you are judgment proof, and you tell a creditor in writing that you are judgment proof, it will keep them from filing a garnishment.

RESOURCES FOR MORE INFORMATION

There is lots of information about various different legal issues, including how to do a Challenge to Garnishment available for free at www.oregonlawhelp.org. You may also wish to contact your local legal aid program, or speak to a private attorney. If you want to hire a private attorney you may contact the Oregon State Bar Lawyer Referral Service at (800) 452-7636, Monday to Friday, 9am-5pm, to get a 30-minute consultation with a private attorney for \$35.00, if you go over ½ hour they can charge more.

These instructions are not a complete statement of the law. For legal information or advice, please talk to a lawyer or visit your local law library. Each court has local rules, programs and procedures that may not be explained in these instructions. The information in this brochure is valid as of 11.1.2009.

