

COLLECTION OF A JUDGMENT DEBTOR & CREDITOR



Magistrate Court-Civil Division

This pamphlet is general in nature and is not designed to give legal advice. The Court does not guarantee the legal sufficiency of this pamphlet or that it meets your specific needs. Also, as the law is constantly changing, the information in this pamphlet may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

WHAT IS A JUDGMENT?

At the conclusion of a **Trial**, the Judge or Jury will make a written decision called a **Judgment** about who wins or loses and the amount of any money, attorney's fees, or court costs that will be awarded. The **Judgment** usually does not state how or when the money will be paid.

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It is the Judgment Creditor's responsibility to collect the Judgment.
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The party to whom the money is owed is called the **Judgment Creditor** ("Creditor"). The party owing the money is the **Judgment Debtor** ("Debtor"). **Judgments** are typically reported by credit reporting agencies and may affect a **Debtor's** credit rating.

The **Creditor** may begin the collection process immediately after the **Judgment** is filed. There are three basic ways to collect a **Judgment** in **Magistrate Court**:

- *Agreement between the parties;*
- *Garnishment; and/or*
- *Execution on a Judgment.*

WHAT IS EXECUTION OF A JUDGMENT?

Execution of a Judgment is the legal process of enforcing a **Judgment** by seizing and selling the **Debtor's** property. A magistrate judgment cannot be executed against land or homes. A **Writ of Execution** permits the Sheriff to take and sell the **Debtor's** property. The proceeds from the sale are used to pay for the cost of the sale and are then paid to the **Creditor** and applied toward the amount owed by the **Debtor** under the **Judgment**.

To obtain a **Writ of Execution**, the **Creditor** first must serve the **Debtor** with a **Notice of Right to Claim Exemptions from Execution** to which the **Debtor** has 10 days to respond.

A **Notice of Right to Claim Exemptions from Execution** tells the **Debtor** that it can claim certain types of property exempt from execution. If the **Debtor** files a **Claim of Exemption** the Sheriff may not be able to take the **Debtor's** property, which is exempt. However, the **Debtor** must identify the exempt property; otherwise, the Sheriff can take possession and sell any and all personal property owned by the **Debtor**.

The following are examples of some of the types of property that are exempt from execution, and therefore cannot be taken by the Sheriff to satisfy a Judgment:

- Personal property up to \$500.00
- Tools of the trade up to \$1,500.00
- Equity in one motor vehicle up to \$4,000.00
- Clothing, Furniture and Books
- Jewelry – not to exceed \$2,500.00
- Medical and health equipment
- Pension and retirement proceeds or accounts

- An additional \$5,000.00 of any type of property can be declared exempt.

Ten days after the **Creditor** serves the **Debtor** with a *Notice of Right to Claim Exemptions from Execution*, the **Creditor** must file a sworn *Application for Writ of Execution* with the Court before the Judge or Court Clerk can issue the *Writ of Execution*. After the Judge or Court Clerk has issued the *Writ of Execution*, the **Creditor** must give the Writ to the Sheriff who will go to the **Debtor's** residence within 60 days of the issuance of the *Writ*, take the **Debtor's** property, and sell the property at a public sale. If the **Debtor** does not file a *Claim of Exemptions*, the Sheriff may sell any of the **Debtor's** property.

If the **Debtor** files a *Claim of Exemptions* and the **Creditor** disputes that the property is exempt, the **Creditor** can file a *Notice of Dispute and Request for Hearing*. Then, the Judge will hold a hearing and decide if the property is exempt. However, if the **Creditor** does not file a *Notice of Dispute* of the Debtor's claimed exemptions, the Sheriff will take and sell only the **Debtor's non-exempt** property. The proceeds of the Sheriff's sale will be used to pay the costs of the sale and the **Creditor**.

WHAT IS A GARNISHMENT?

The **Creditor** is required to pursue a Writ of Execution first before pursuing a Garnishment.

Garnishment is a legal process where money or property of the **Debtor**, which is held by a third party such as the **Debtor's** employer or bank ("Garnishee"), can be taken to pay a **Judgment**. Wages or bank accounts are the most common types of property garnished. A *Writ of Garnishment* directs the **Garnishee** to hold the **Debtor's** money or property until the Court can determine to whom it should be paid. Unless the garnishment is for alimony or child support, To garnish a **Debtor's** property, a **Creditor** must file an *Application for Writ of Garnishment* with the Court. The *Application* must include the name and address of the **Garnishee**.

When an *Application* is filed with the Court, the Judge or Court Clerk may issue a **Writ of Garnishment**. The **Creditor** must serve the *Application for Writ of Garnishment*, *Writ of Garnishment* and *Answer to Writ of Garnishment* on the **Garnishee**. If the **Debtor** is an individual, then the **Creditor** also must serve a *Notice of Right to Claim Exemptions* and *Claim of Exemption* forms on the **Garnishee**. The **Garnishee** is then required to deliver copies of those documents to the **Debtor**. When an *Application for Writ of Garnishment* is filed, the Court Clerk will prepare a service packet, which contains all of the required documents.

The Garnishment service packet must be served on the Garnishee in the same manner as the service of a Summons when a Complaint is served.

If a **Garnishee** has any of the **Debtor's** money or property, then the **Garnishee** must hold the money or property until the Court orders its distribution. After the *Writ of Garnishment* is served, the **Garnishee** must file a written *Answer* with the Court within 20 days. If the **Garnishee** does not file an *Answer* to the *Writ* within 20 days, the **Creditor** can file a *Motion for Default Judgment Against the Garnishee*. If the **Garnishee** defaults, the **Garnishee** may be responsible for the full amount of the **Judgment**. If the **Garnishee** files an *Answer* that, for example, it is holding money or wages of the Debtor, then the Court may enter a *Judgment on Writ of Garnishment and Order to Pay*, which orders the **Garnishee** to pay a portion of **Debtor's** money or wages to the **Creditor**.

Note: The Garnishee can collect from the Debtor any attorney's fees and costs that it has incurred in Answering the Garnishment.

The **Garnishee** can pay the **Creditor** up to 25% of the **Debtor's** disposable earnings as long as the **Debtor** receives at least 40 times the hourly federal minimum wage per week.

A Garnishment of wages continues until the Judgment debt is paid in full or until the Debtor is no longer employed by the Garnishee.

If the **Garnishee** owes money or property to the **Debtor**, other than wages, the Court may enter a *Judgment on Writ of Garnishment and Order to Pay* directing the **Garnishee** to pay all of the funds or property to the **Creditor** up to the amount of the Judgment.

Within 10 days after the *Writ of Garnishment* is served on the **Debtor**, the **Debtor** may file a *Claim of Exemptions*. A *Claim of Exemptions* lists the types of money that cannot be garnished. Some common exemptions from garnishment are:

- Social Security benefits (OASDI or SSI)
- Public Assistance Benefits (AFDC, GA, welfare)
- Veterans benefits
- Workers' and unemployment compensation
- Life, accident and health insurance proceeds
- Pension and Retirement Funds

If the **Debtor** files a *Claim of Exemption*, the money will be exempt, unless the **Creditor** objects by filing a *Notice of Dispute and Request for Hearing* with the Court. If a *Notice of Dispute* is filed, the Court will hold a hearing within 10 days to decide the issue.

STAYING THE COLLECTION PROCESS

The collection process can be stayed or stopped if the **Debtor** files **Bankruptcy**. A bond also can be posted if the **Debtor Appeals** the **Judgment**.

INFORMATION ABOUT THE DEBTOR

If the **Creditor** wants any information about the **Debtor's** assets, employment or property to assist in collecting the **Judgment**, the **Creditor** can request a **Supplementary Proceeding**, which is a hearing before the **Judge**. A **Creditor** also can subpoena or depose any person or subpoena documents in an attempt to gather this information. A *Subpoena* must be served on the person having or holding the information requested.

WHEN THE JUDGMENT IS PAID

When the **Debtor** partially or fully pays the **Judgment**, the **Creditor** should file a *Partial* or *Full Satisfaction of Judgment* with the Court. When a *Full Satisfaction of Judgment* is filed, the case is closed. If the **Judgment** has been fully paid and the **Creditor** does not file a *Satisfaction of Judgment*, the **Debtor** can file a *Motion for Satisfaction of Judgment* with the Court. The Judge will then schedule a hearing to determine if the **Creditor** has been paid.

OTHER PAMPHLETS ARE AVAILABLE AT THE JUDICIAL WEBSITE (WWW.NMCOURTS.GOV) OR AT ANY PUBLIC LIBRARY.

