



Your Rights When a Creditor Goes After Your Bank Account

Q.) What can I do if I can't pay all of my bills?

A.) The death of a spouse, a sudden change in your health, or the loss of a job can cause severe financial problems. Through no fault of your own, you may suddenly be unable to pay all of your debts. If you find yourself in this situation, you should talk to an attorney or a financial counselor about your options. The failure to pay some debts can have tragic results. For example, you can lose your housing if you don't pay your rent or mortgage. You will need to prioritize your debts and pay the most critical bills first. If you don't have enough to pay all of your bills, some types of income and property are protected from creditors. Examples of some of the protections will be discussed later in this article.

Q.) Can a creditor take money from my bank account?

A.) In some cases, a creditor may be able to take money from your bank account. However, before the creditor could try to take money from your bank account, they would have to sue you and be able to get a judgment against you.

Q.) What is a judgment?

A.) A judgment is a court order that states that you owe the creditor money. If the creditor sues you, you will receive a Summons and Complaint. This is a legal document that tells you what the creditor's claim is. If you think the creditor is wrong, you would have twenty (20) days to respond. To respond, you would prepare a legal document called an Answer. An Answer tells the creditor your legal defense to the debt. If you receive a Summons and Complaint, you should contact an attorney for advice.

Q.) Can the creditor sue me if I can't pay my bill?

A.) Yes, the fact that you are unable to pay a debt would not stop the creditor from suing you. However, the creditor may not be able to collect from you if all of your income and property is exempt (protected) under the law. If the creditor cannot collect from you, even with a court judgment, because all of your income and assets are protected, you are "judgment-proof".

Q.) What kinds of income are protected in my bank account?

A.) Examples of protected income that many elderly or disabled individuals rely on include: Social Security, Supplemental Security Income (SSI), Railroad Retirement and benefits from the Veteran's Administration. Federal pensions are also protected but most other pensions can be taken. Most benefits based on need are also protected if they are deposited into your bank account, but the protection is only good for sixty (60) days. Examples of benefits based on need that many seniors receive include: General Assistance (GA), Minnesota Supplemental Aid (MSA) and fuel assistance grants. This is not a complete list, so you should talk to an attorney about your specific situation if you have been sued.

Q.) How do I protect my money if it is exempt (protected) from creditors?

A.) If the creditor has an attorney, the first thing you can do is send the attorney proof that all of your income is from a protected source. Do this as soon as possible, even if the attorney has not yet served

you with a Summons and Complaint. If you use direct deposit, your bank statement will show the source of your funds. You need to send two (2) recent bank statements to the attorney to prove your funds are protected. NOTE: this will not protect any funds in the account that are not from a protected source. You can also send the attorney a copy of your yearly benefit statement or a letter from the government agency that states the type of benefit you receive. However, this will not provide the proof necessary to protect your bank account.

Q.) What happens if the creditor's attorney is already trying to take funds from my bank account?

A.) After your bank receives the legal papers from the creditor's attorney, they must send you an exemption notice within two business days. The exemption notice tells you what types of income are protected. If your income is exempt, you need to fill out the exemption notice and return one to the bank and one to the creditor (or the creditor's attorney) within fourteen (14) days. You need to send the forms to the bank and the creditor/attorney on the same day. While you have fourteen days, you should complete and return the form as quickly as possible. The quickest way to get your funds released would be to hand-deliver the forms. You are required to include two (2) bank statements for the 2 month period before the attachment. Keep a copy of the completed exemption notice for your records. NOTE: Under federal law, federal funds (Social Security, SSI, VA benefits and federal pensions) that are put into an account by direct deposit cannot be frozen or sent to a creditor. The law protects two (2) months of federal benefits and the bank cannot charge you a fee if someone tries to attach your account containing federal benefits.

Q.) What happens if I claim an exemption?

A.) If the creditor doesn't object to your exemption claim within six (6) days, your bank will release the funds to you. If the creditor/attorney objects, they must file an objection to your claim within 6 days of receiving it and request a hearing on the claim. At the hearing, a judge will decide if your money is protected and must issue an Order (decision) within 3 days of the hearing. You should consult an attorney if the creditor/attorney objects to your exemption claim.

Q.) What should I do if some, but not all of the money in my bank account is exempt?

A.) There is a way to determine the exact amount of money that is protected. It is called first in, first out. Essentially, the money that is deposited into the account first is the first to leave when you write a check. You should talk to an attorney if some of the funds in your account are not from a protected source or if you are unsure if the funds are exempt. If you claim funds are protected when they are not, the court can add a penalty of \$100 to your debt. On the other hand, the court can fine the creditor/attorney \$100 if they object to an exemption in bad faith. If you have given proof that your income is exempt, and the creditor/attorney still objects, it is probably bad faith.

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