

CHAPTER 571

GARNISHMENT

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571.71 GARNISHMENT; WHEN AUTHORIZED.

As an ancillary proceeding to a civil action for the recovery of money, a creditor may issue a garnishment summons as provided in this chapter against any third party in the following instances:

(1) at the time the civil action is commenced or at any time after the commencement of the civil action, but before the entry of a judgment, if the court orders the issuance of the garnishment summons pursuant to section 571.93;

(2) at any time 45 days or more after service of the summons and complaint upon the debtor in the civil action when a judgment by default could have, but has not, been entered pursuant to Rule 55.01(a) of the Minnesota Rules of Civil Procedure for the District Courts. Garnishment under this clause is effective only after the Notice of Intent to Garnish form in section 571.72, subdivision 11, and the Exemption form in section 571.72, subdivision 10, are served on the debtor at any time 20 or more days after the service of the Summons and Complaint and, in addition, the creditor does not receive an Answer from the debtor within 25 days after service of the Notice of Intent to Garnish. The Notice of Intent to Garnish form and the Exemption form must be substantially in the form set forth in section 571.72, subdivisions 10 and 11. If a creditor sends a Notice of Intent to Garnish form to a debtor under this clause, the creditor cannot obtain a default judgment against the debtor under Rule 55.01(a) of the Minnesota Rules of Civil Procedure for the District Courts until 25 days after the service of the Notice of Intent to Garnish form. No filing of a pleading or other documents by the creditor is required to issue a garnishment summons under this clause; however, the creditor must comply with the service requirement of section 571.72, subdivision 4; or

(3) at any time after entry of a money judgment in the civil action.

History: 2009 c 31 s 4

571.72 GENERAL GARNISHMENT PROVISIONS.

[For text of subs 1 to 9, see M.S.2008]

Subd. 10. Exemption notice for prejudgment garnishment.

EXEMPTION NOTICE

IMPORTANT NOTICE: A garnishment summons may be served on your employer, bank, or other third parties without any further court proceeding or notice to you. See the attached Notice of Intent to Garnish for more information.

The following money and wages may be protected (the legal word is exempt) from garnishment:

1. Financial institutions/bank

Some of the money in your account may be protected because you receive government benefits from one or more of the following places:

MFIP - Minnesota family investment program,

MFIP Diversionary Work Program,
Work participation cash benefit,
GA - general assistance,
EA - emergency assistance,
MA - medical assistance,
GAMC - general assistance medical care,
EGA - emergency general assistance or county crisis funds,
MSA - Minnesota supplemental aid,
MSA-EA - MSA emergency assistance,
Food Support,
SSI - Supplemental Security Income,
MinnesotaCare,
Medicare part B premium payments,
Medicare part D extra help,
Energy or fuel assistance,
Social Security benefits,
Unemployment benefits,
Workers' compensation,
Veterans benefits.

Sending the creditor's attorney (or creditor, if no attorney) a copy of BANK STATEMENTS that show what was in your account for the past 60 days may give the creditor enough information about your exemption claim to avoid a garnishment.

2. Earnings

All or some of your earnings may be completely protected from garnishment if:

All of your earnings (wages) may be protected if:

You get government benefits (see list of government benefits)

You currently receive other assistance based on need

You have received government benefits in the last six months

You were in jail or prison in the last six months

Your wages are only protected for 60 days after they are deposited in your account so **it would be helpful if you immediately send the undersigned creditor a copy of BANK STATEMENTS that show what was in your account for the past 60 days.**

Some of your earnings (wages) may be protected if:

If all of your earnings are not exempt, some of your earnings may still be protected for 20 days after they were deposited in your account. The amount protected is the larger amount of:

75 percent of your wages (after taxes are taken out); or

(insert the sum of the current federal minimum wage) multiplied by 40.

The money from the following are also exempt for 20 days after they are deposited in your account.

An accident, disability, or retirement pension or annuity

Payments to you from a life insurance policy

Earnings of your child who is under 18 years of age

Child support

Money paid to you from a claim for damage or destruction of property. Property includes household goods, farm tools or machinery, tools for your job, business equipment, a mobile home, a car, a musical instrument, a pew or burial lot, clothes, furniture, or appliances.

Death benefits paid to you.

YOU WILL BE ABLE TO CLAIM THESE EXEMPTIONS WHEN YOU RECEIVE A NOTICE. You will get the notice at least ten days BEFORE a wage garnishment. BUT if the creditor garnishes your bank account, you will not get the notice until AFTER the account has been frozen. IF YOU BELIEVE THE MONEY IN YOUR BANK ACCOUNT OR YOUR WAGES ARE EXEMPT, YOU SHOULD IMMEDIATELY CONTACT THE PERSON BELOW. YOU SHOULD TELL THEM WHY YOU THINK YOUR ACCOUNT OR WAGES ARE EXEMPT TO SEE IF YOU CAN AVOID GARNISHMENT.

Creditor

Creditor address

Creditor telephone number

Subd. 11. **Notice of intent to garnish.** The notice of intent to garnish must be in substantially the following form:

IMPORTANT! READ THIS CAREFULLY!

NOTICE OF INTENT TO GARNISH

..... against

Plaintiff/Creditor

Defendant/Debtor

Your money, property, or earnings are in danger of being garnished because you did not send a written "Answer" to the Summons and Complaint served on you over 20 days ago.

There may not be a case filed in court, BUT because you did not send a written "Answer" the creditor may serve a garnishment summons on your employer, bank, or other third parties. This means that your money or wages can be garnished (held or taken). Under Minnesota law, this can happen any time 20 days after the date you receive this notice.

There will be **NO COURT HEARING** or any further notice to you prior to a garnishment if you do nothing. There may not be a file open at the Clerk of the Court's office. **There are things you can do to avoid a garnishment, but you must act quickly.**

Please read these instructions carefully. **You have 20 days** to do one of the following:

1. **Send an Answer.** If you do not think you owe the money or if you have a legal reason that you did not pay, send a written "Answer" to the Summons and Complaint. Your "Answer" should tell the creditor why you think you do not owe some or all of the money. Contact a lawyer if you do not know what to do, need help with an answer, or have any questions about the debt.

2. **Claim an Exemption.** Even if you do not have a defense to the complaint, some of your money may be protected (the legal word is exempt) from garnishment. This means it is

protected and cannot be taken. The creditor will send you a form to claim these exemptions at a later time, **but you can possibly avoid the garnishment** by contacting the person below **immediately** to claim your exemption. Attached to this notice is a list of exemptions you may be able to claim.

3. **If you do not have a defense and your money is not exempt** you can call the person below before the 20 days are up and try to set up a payment plan that works for both you and your creditor. You can contact the person below at any time to try to work out a payment plan, but if you wait too long or cannot agree on a payment plan, they may garnish your wages, bank accounts, or assets.

If you do not do any of these things, your money can be garnished. The creditor can garnish your wages, bank accounts, or other assets. They do not have to go to court to let you know when they start taking your money.

LAW FIRM

Dated:

By:

Attorney, #

Attorneys for Plaintiff

Address

Telephone

History: 2009 c 31 s 5,6

571.911 EXEMPTION NOTICE; DUTY OF FINANCIAL INSTITUTION.

If the garnishment summons is used to garnish funds of a debtor who is a natural person and if the funds to be garnished are held on deposit at a financial institution, the creditor shall serve with the garnishce summons a notice, instructions, and two copies of an exemption notice. The notice, instructions, and exemption notices must be substantially in the forms set forth in section 571.912. Failure of the creditor to send the exemption notice renders the garnishment void, and the financial institution shall take no action. Upon receipt of the garnishment summons and exemption notices, the financial institution shall retain as much of the amount under section 571.73 as the financial institution has on deposit owing to the debtor, but not more than 110 percent of the creditor's claim.

History: 2009 c 31 s 7

571.912 FORM OF NOTICE, INSTRUCTIONS, AND EXEMPTION NOTICE.

Subdivision 1. **Form of notice.** The notice, instructions, and exemption notice informing a debtor that a garnishment summons has been used to attach funds of the debtor to satisfy a claim must be a separate notice and must be substantially in the following form:

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF JUDICIAL DISTRICT
..... (Creditor)	
..... (Debtor)	
..... (Financial	
..... institution)	

IMPORTANT NOTICE
YOUR FUNDS HAVE BEEN GARNISHED

The Creditor has frozen money in your account at your financial institution.

Your account balance is \$.....

The amount being held is \$.....

The amount being held will be frozen for 14 days from the date of this notice.

Some of your money in your account may be protected (the legal word is exempt). You may be able to get it sooner than 14 days if you act quickly and follow the instructions on the next page.

The attached exemption form lists some different sources of money in your account that may be protected. If your money is from one or more of these sources, place a check on the line on the form next to the sources of your money. If it is from one of these sources, the Creditor cannot take it.

BUT, you must follow the instructions and return the exemption form and copies of your bank statements from the last 60 days to have the bank unfreeze your money. If you do not follow the instructions or your Creditor gets an order from the court or writ of execution, your financial institution will give the money to your Creditor. If that happens and it is protected, you can still get it back from the Creditor later, but that is not as easy to do as filling in the form now.

See next pages for instructions and the exemption form.

Subd. 2. Form of instructions. The instructions required must be in a separate form and must be substantially in the following form:

INSTRUCTIONS

Note: The creditor is who you owe the money to. You are the debtor.

1. Fill out both of the attached exemption forms in this packet.

If you check one of the lines, you should also give proof that shows that some or all of the money in your account is from one or more of the protected sources. Creditors may ask for a hearing if they question your exemptions.

To avoid a hearing:

Case numbers should be added to the form.

Copies of documents should be sent with the form.

NOTICE: YOU MUST SEND TO THE CREDITOR'S ATTORNEY (OR TO THE CREDITOR, IF NO ATTORNEY) COPIES OF YOUR BANK STATEMENTS FOR THE PAST 60 DAYS BEFORE THE GARNISHMENT. Keep a copy of your bank statements in case there are questions about your claim. If you do not send to the creditor's attorney (or to the creditor, if no attorney) bank statements with your exemption claim, the financial institution may release your money to the creditor once the creditor gives the financial institution a court order directing it to turn over the funds.

2. Sign the exemption forms. Make one copy to keep for yourself.

3. Mail or deliver the other copies of the form by (insert date).

BOTH COPIES MUST BE MAILED OR DELIVERED THE SAME DAY.

One copy of the form and the copies of your bank statements go to:

.....

(Insert name of creditor or creditor's attorney)

.....

(Insert address of creditor or creditor's attorney)

One copy goes to:

.....

(Insert name of bank)

.....

(Insert address of bank)

HOW THE PROCESS WORKS

If You Do Not Send in the Exemption Form and Bank Statements:

14 days after the date of this letter some or all of your money may be turned over to the creditor once they get an order from the court telling the financial institution to do this.

If You Send in the Exemption Form and Bank Statements:

Any money that is NOT protected can be turned over to the creditor once they get an order from the court.

If the Creditor Does Not Object:

The financial institution will unfreeze your money six business days after the institution gets your completed form.

If the Creditor Objects:

The money you have said is protected on the form will be held by the bank. The creditor has six business days to object (disagree) and ask the court to hold a hearing. You will receive a Notice of Objection and a Notice of Hearing.

The financial institution will hold the money until a court decides whether your money is protected or not. Some reasons a creditor may object are because you did not send copies of your bank statements or other proof of the benefits you received. Be sure to include these when you send your exemption form.

You may want to talk to a lawyer for advice about this process. If you are low income you can call Legal Aid.

PENALTIES:

If you claim that your money is protected and a court decides you made that claim in bad faith, the court can order you to pay costs, actual damages, attorney fees, and an additional amount of up to \$100. For example, it may be bad faith if you claim you receive government benefits that you do not receive.

If the creditor made a bad faith objection to your claim that your money is protected, the court can order them to pay costs, actual damages, attorney fees, and an additional amount of up to \$100.

Subd. 3. **Exemption notice.** The exemption notice must be a separate form and must be in substantially the following form:

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF JUDICIAL DISTRICT
..... (Creditor)	
..... (Debtor)	
..... (Financial institution)	

EXEMPTION FORM

A. HOW MUCH MONEY IS PROTECTED

.... I claim ALL of the money being frozen by the bank is protected.

.... I claim SOME of the money is protected. The amount I claim is protected is \$.....

B. WHY THE MONEY IS PROTECTED

My money is protected because I get it from one or more of the following places:
(Check all that apply)

.... **Government benefits**

Government benefits include, but are not limited to, the following:

MFIP - Minnesota family investment program,

MFIP Diversionary Work Program,

Work participation cash benefit,

GA - general assistance,

EA - emergency assistance,

MA - medical assistance,

GAMC - general assistance medical care,

EGA - emergency general assistance,

MSA - Minnesota supplemental aid,

MSA-EA - MSA emergency assistance,

Food Support,

SSI - Supplemental Security Income,

MinnesotaCare,

Medicare part B premium payments,

Medicare part D extra help,

Energy or fuel assistance.

LIST SOURCE(S) OF FUNDING IN YOUR ACCOUNT

.....

LIST THE CASE NUMBER AND COUNTY

Case Number:

County:

Government benefits also include:

.... **Social Security benefits**

.... **Unemployment benefits**

.... **Workers' compensation**

.... **Veterans benefits**

If you receive any of these government benefits, include copies of any documents you have that show you receive Social Security, unemployment, workers' compensation, or veterans benefits.

.... **Other assistance based on need**

You may have assistance based on need from another source that is not on the list. If you do, check this box, and fill in the source of your money on the line below:

Source:

Include copies of any documents you have that show the source of this money.

EARNINGS

ALL or SOME of your earnings (wages) may also be protected.

.... **All of your earnings (wages) are protected if:**

- You get government benefits (see list of government benefits)
- You currently receive other assistance based on need
- You have received government benefits in the last six months
- You were in jail or prison in the last six months

If you check one of these lines, your wages are only protected for 60 days after they are deposited in your account so you MUST send the creditor a copy of BANK STATEMENTS that show what was in your account for the 60 days right before the bank froze your money.

.... **Some of your earnings (wages) are protected.**

If all of your earnings are not exempt, then some of your earnings are still protected for 20 days after they were deposited in your account. The amount protected is the larger amount of:

- 75 percent of your wages (after taxes are taken out); or
- (insert the sum of the current federal minimum wage) multiplied by 40.

OTHER EXEMPT FUNDS

The money from the following are also completely protected after they are deposited in your account.

- **An accident, disability, or retirement pension or annuity**
- **Payments to you from a life insurance policy**
- **Earnings of your child who is under 18 years of age**
- **Child support**
- **Money paid to you from a claim for damage or destruction of property**
Property includes household goods, farm tools or machinery, tools for your job, business equipment, a mobile home, a car, a musical instrument, a pew or burial lot, clothes, furniture, or appliances.
- **Death benefits paid to you**

I give permission to any agency that has given me cash benefits to give information about my benefits to the above-named creditor, or its attorney. The information will **ONLY** concern whether I get benefits or not, or whether I have gotten them in the past six months.

If I was an inmate in the last six months, I give my permission to the correctional institution to tell the above-named creditor that I was an inmate there.

YOU MUST SIGN AND SEND THIS FORM BACK TO THE CREDITOR'S ATTORNEY (OR TO THE CREDITOR, IF NO ATTORNEY) AND THE BANK. REMEMBER TO INCLUDE A COPY OF YOUR BANK STATEMENTS FOR THE PAST 60 DAYS. FILL IN THE BLANKS BELOW AND GO BACK TO THE INSTRUCTIONS TO MAKE SURE YOU DO IT CORRECTLY.

I have mailed or delivered a copy of this form to:

.....
(Insert name of creditor or creditor's attorney)

.....
(Insert address of creditor or creditor's attorney)

I have also mailed or delivered a copy of this exemption form to my bank at the address listed in the instructions.

DATED:

DEBTOR
.....

DEBTOR ADDRESS
.....

DEBTOR TELEPHONE NUMBER

History: 2009 c 31 s 8

571.913 EFFECT OF EXEMPTION NOTICE.

Within two business days after receipt of the garnishment summons, the notice, instructions, and two copies of the exemption notice, the financial institution shall serve upon the debtor the notice, instructions, and two copies of the exemption notice. The financial institution shall serve these forms by first class mail to the last known address of the debtor. If no claim of exemption is received by the financial institution within 14 days after the exemption notices are mailed to the debtor, the funds remain subject to the garnishment summons. If the debtor elects to claim an exemption, the debtor shall complete the exemption notices, sign them under penalty of perjury, and deliver one copy to the financial institution and one copy to the attorney for the creditor within 14 days of the date postmarked on the correspondence mailed to the debtor containing the exemption notices. The debtor is also required to include copies of bank statements for the prior 60 days with the exemption notice delivered to the attorney for the creditor. In the event that there is no attorney for the creditor, then the notice and the bank statements must be sent directly to the creditor. Failure of the debtor to deliver the executed exemption notice or copies of the required bank statements for the prior 60 days does not constitute a waiver of a claimed right to an exemption. Upon timely receipt of a claim of exemption, funds not claimed to be exempt by the debtor remain subject to the garnishment summons. All money claimed to be exempt shall be released to the debtor upon the expiration of six business days after the date postmarked on the envelope containing the executed exemption notice mailed to the financial institution, or the date of personal delivery of the executed exemption notice to the financial institution, unless within that time the creditor interposes an objection to the exemption.

History: 2009 c 31 s 9

571.914 OBJECTION TO EXEMPTION CLAIM.

Subdivision 1. **Objections and request for hearing.** An objection shall be interposed, within six business days of receipt by the creditor of an exemption claim from the debtor, by mailing or delivering one copy of the Notice of Objection and Notice of Hearing to the financial institution and one copy of the Notice of Objection and Notice of Hearing to the debtor.

The Notice of Objection and Notice of Hearing form must be substantially in the form set out in subdivision 2.

The court administrator may charge a fee of \$1 for the filing of a Notice of Objection and Notice of Hearing. Upon the filing of a Notice of Objection and Notice of Hearing, the court administrator shall schedule the matter for hearing no sooner than five business days but no later than seven business days from the date of filing. A debtor may request continuance of the hearing by notifying the creditor and the court. The court shall schedule the continued hearing within seven days of the original hearing date.

An order stating whether the debtor's funds are exempt shall be issued by the court within three days of the date of the hearing.

Subd. 2. **Form of Notice of Objection and Notice of Hearing.** The Written Objection and Notice of Hearing must be in substantially the following form:

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF JUDICIAL DISTRICT
..... (Creditor)	
..... (Debtor)	CREDITOR'S NOTICE OF OBJECTION
..... (Garnishee)	AND NOTICE OF HEARING ON EXEMPTION CLAIM
.....	
.....	
.....	
(CREDITOR OR CREDITOR'S ATTORNEY)	

NOTICE OF HEARING

The creditor objects to your exemption claim. This hearing is to resolve your exemption claim.

Hearing Date:

Time:

Hearing Place:

The creditor objects to your claim of exemption from garnishment for the following reason(s):

.....

.....

.....

(Note: Bring with you to the hearing all documents and materials supporting your exemption claim. Failure to do so could delay the court's decision.)

If the creditor receives all documents and materials supporting your exemption claim before the hearing date, the creditor may agree with your claim and you can avoid a hearing.

Because a court hearing will be held on your claim that your funds are protected, your financial institution will retain the funds until it receives an order from the court.

Subd. 3. [Repealed by amendment, 2009 c 31 s 10]

Subd. 4. **Duties of financial institution if objection is made to exemption claim.** Upon receipt of a Notice of Objection and Notice of Hearing from the creditor within the specified seven-day period, the financial institution shall retain the funds claimed to be exempt. The financial institution shall retain the funds claimed to be exempt until otherwise ordered by the court, upon mutual agreement of the parties, or until the garnishment lapses pursuant to section 571.79.

History: 2009 c 31 s 10

571.925 FORM OF NOTICE.

The ten-day notice informing a debtor that a garnishment summons may be used to garnish the earnings of an individual must be substantially in the following form:

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF JUDICIAL DISTRICT
..... (Creditor)	
against	
	GARNISHMENT EXEMPTION
..... (Debtor)	NOTICE AND NOTICE OF
and	INTENT TO GARNISH EARNINGS
..... (Garnishee)	

PLEASE TAKE NOTICE that a garnishment summons or levy may be served upon your employer or other third parties, without any further court proceedings or notice to you, ten days or more from the date hereof. Some or all of your earnings are exempt from garnishment. If your earnings are garnished, your employer must show you how the amount that is garnished from your earnings was calculated. You have the right to request a hearing if you claim the garnishment is incorrect.

Your earnings are completely exempt from garnishment if you are now a recipient of assistance based on need, if you have been a recipient of assistance based on need within the last six months, or if you have been an inmate of a correctional institution in the last six months.

Assistance based on need includes, but is not limited to:

- MFIP** - Minnesota family investment program,
- MFIP Diversionary Work Program,**
- Work participation cash benefit,**
- GA** - general assistance,
- EA** - emergency assistance,

- MA - medical assistance,
- GAMC - general assistance medical care,
- EGA - emergency general assistance,
- MSA - Minnesota supplemental aid,
- MSA-EA - MSA emergency assistance,
- Food Support,
- SSI - Supplemental Security Income,
- MinnesotaCare,
- Medicare part B premium payments,
- Medicare part D extra help,
- Energy or fuel assistance.

If you wish to claim an exemption, you should fill out the appropriate form below, sign it, and send it to the creditor's attorney and the garnishee.

You may wish to contact the attorney for the creditor in order to arrange for a settlement of the debt or contact an attorney to advise you about exemptions or other rights.

PENALTIES

- (1) Be advised that even if you claim an exemption, a garnishment summons may still be served on your employer. If your earnings are garnished after you claim an exemption, you may petition the court for a determination of your exemption. If the court finds that the creditor disregarded your claim of exemption in bad faith, you will be entitled to costs, reasonable attorney fees, actual damages, and an amount not to exceed \$100.
- (2) HOWEVER, BE WARNED if you claim an exemption, the creditor can also petition the court for a determination of your exemption, and if the court finds that you claimed an exemption in bad faith, you will be assessed costs and reasonable attorney's fees plus an amount not to exceed \$100.
- (3) If after receipt of this notice, you in bad faith take action to frustrate the garnishment, thus requiring the creditor to petition the court to resolve the problem, you will be liable to the creditor for costs and reasonable attorney's fees plus an amount not to exceed \$100.

Dated:

.....
 (Attorney for) Creditor

.....
 Address

.....
 Telephone

DEBTOR'S EXEMPTION CLAIM NOTICE

I hereby claim that my earnings are exempt from garnishment because:

- (1) I am presently a recipient of relief based on need. (Specify the program, case number, and the county from which relief is being received.)

.....
Program Case Number (if County
known)

(2) I am not now receiving relief based on need, but I have received relief based on need within the last six months. (Specify the program, case number, and the county from which relief has been received.)

.....
Program Case Number (if County
known)

(3) I have been an inmate of a correctional institution within the last six months. (Specify the correctional institution and location.)

.....
Correctional Institution Location

I hereby authorize any agency that has distributed relief to me or any correctional institution in which I was an inmate to disclose to the above-named creditor or the creditor's attorney only whether or not I am or have been a recipient of relief based on need or an inmate of a correctional institution within the last six months. I have mailed or delivered a copy of this form to the creditor or creditor's attorney.

.....
Date Debtor
.....
Address
.....
Debtor Telephone Number

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF JUDICIAL DISTRICT
..... (Creditor)
..... (Debtor)
..... (Financial institution)

History: 2009 c 31 s 11