

What can I do if I cannot satisfy the judgment and my property is not exempt?

You may wish to contact the creditor’s attorney directly in an attempt to negotiate a payment plan. The attorney is not obligated to arrange payments, however, the attorney may withhold further collection efforts if payments are being made as agreed.

You may wish to consider the various forms of relief available to you under the Bankruptcy Act. You may file a Chapter 13 Bankruptcy action to establish a wage-earner plan wherein you pay your creditors on a reduced basis. You may also consider a discharge of all your debts by filing a Chapter 7 Bankruptcy. In both of these proceedings, court actions and executions of judgments against you are stayed while the bankruptcy action is proceeding. You should consult with an attorney if you are considering filing for bankruptcy.

MODEL LETTER TO DEBT COLLECTOR

Date _____

Address of Debt Collector

Re: Account #

In regard to the above-referenced matter, I request the following:

- That you cease communication with me, except notification of the status of my account, e.g. the collection efforts are terminated or what action you intend.
- That you cease all communication with me at my place of employment.
- That if it is necessary to communicate with me by telephone, call me at home between 8:00 am and 9:00 pm only.
- I am represented by an attorney. Please direct all future communication to _____.
- I am disputing all or part of this debt. Please provide me with written verification of the debt. This should include, at a minimum, the name and address of the creditor, copies of all contracts, bills, correspondence, and notices, etc.

Sincerely,

Your name

What are my rights if my creditor threatens to repossess?

You do not have to consent to the repossession. A creditor can repossess without a court order, but only if it can be accomplished without breaching the peace.

By refusing to consent to the repossession, you are forcing the creditor to proceed by taking court action. This may expose you to additional court costs and attorney fees.

You may be able to negotiate a voluntary repossession. Sometimes, a creditor will agree not pursue a deficiency action if you voluntarily return the vehicle. A creditor is not obligated to do this.

Following repossession you have the right to redeem the vehicle by payment of the full amount due, plus reasonable repossession costs (i.e., towing and storage charges). The creditor must give you written notice of your right to redemption and notice of their intent to sell the vehicle within 60 days after repossession.

NRS 482.516 sets out specific requirements of a notice of sale of a repossessed vehicle. If you are in receipt of such a notice, do not assume that it meets the requirements of Nevada state law. You may wish to consult with an attorney to determine whether the notice meets those requirements and what your rights are in the event it does not.

If you do not redeem the vehicle within ten (10) days of receipt of the notice, the creditor may proceed with the sale. After the sale, the creditor may attempt to collect the “deficiency balance” from you. A “deficiency balance” is the difference between the outstanding debt on the vehicle at the time of resale and what was obtained through the sale of the vehicle. In order to collect a deficiency, however, the sale must be reasonable. If you did not receive written notice of the sale of the vehicle and/or it does not appear that the sale was reasonable, you should consult an attorney.

PLEASE NOTE: Laws are subject to change. Information contained in this pamphlet is based on the laws in effect at date of publication: 8/09.

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DEBT COLLECTION



www.nevadalegalservices.org
www.nevadalawhelp.org

What Are My Rights If I Am Contacted By A Collection Agency Attempting To Collect A Debt?

The Fair Debt Collection Practices Act (FDCPA) set out the rules collection agencies must follow. FDCPA applies only to third party collection. It does not apply to creditors trying to collect money you owe them directly. If a debt collector is harassing you, you do have the following protections:

- You should not be contacted about your debt at any unusual time or place. Generally, any contact from the debt collector before 8:00 am or after 9:00 pm violates the FDCPA.
- If your employer prohibits contact from a collection agency at work, once you advise the collector they must stop all communication with you at work.
- The attempts at collection cannot be threatening. The collector cannot threaten you with jail or physical harm. They also cannot threaten to tell others about your debt to embarrass you.
- If you want to dispute the debt, you can notify the collector of your dispute and request written verification of the debt. This must be done within 30 days from when you received notice of the debt. The collection agency must then verify the debt and provide you with copies of the verification.
- You can request the creditor stop contacting you. Afterwards, you can only be contacted regarding changes on your account (for example, if the debt has been sold or the creditor is going to pursue a judgment).

All requests should be dated and in writing. Be sure to keep a copy for yourself.

What Happens If I Cannot Pay the Debt?

A creditor can sue you for the amount owed as well as court costs and attorney's fees. You should receive a summons and complaint. These documents will state the amount the creditor demands and either demand that you answer in writing within 20 days of the date of service, or demand your appearance in court at a specified time. If you do not file an answer or go to the hearing the creditor can get a default judgment against you. A judgment remains in effect in Nevada for six years, and can be renewed forever.

If the debt is for consumer goods purchased by a loan or credit (e.g., a car), the creditor may repossess if payment is not received.

What If I Want To Contest The Judgment?

If you do not believe you owe the debt or disagree with the amount, you need to file an answer within 20 days of receiving the summons and complaint. Once there is a judgment, the court has ruled you owe the money. The only way to change this is to overturn the judgment which can be very difficult.

What Happens Once There Is A Judgment?

The creditor can execute on the judgment. This allows a creditor to garnish your wages or attach your bank account or other property.

How Much Can A Creditor Garnish?

Only disposable earnings can be garnished. Disposable earnings are what is left after mandatory deductions (Social Security, Income, and Medicare taxes) are withheld.

If your disposable income is \$483.33 or more, then 75% of it is exempt from garnishment and 25% is subject to garnishment. Multiply your income by 0.25. The result is the amount you must pay.

Nevada law allows you to keep 50 times the federal minimum wage in effect at the time of the garnishment. As of July 24, 2009, the federal minimum wage is \$7.25 per hour. 50 times \$7.25 is \$362.50. If your disposable income is \$362.50 or below, all of it is exempt from garnishment.

If your disposable income is between \$362.50 and \$483.33, then you get to keep \$362.50 and the amount subject to garnishment is your income minus \$362.50. The result is the amount that should be deducted from your check each week.

What income is exempt from execution?

- Social Security, SSI, SSD
- Public assistance such as TANF or food stamps
- Unemployment Compensation
- Disposable earnings under \$362.50 per week
- \$1,000 in a bank account
- Veteran's Benefits
- Railroad Retirement benefits
- PERS (Public Employee's Retirement System) or FERS (Federal Employee Retirement System) or CSRS (Civil Servant Retirement System)
- Worker's Compensation
- Child support or alimony income
- Payments received from a wrongful death judgment or settlement

If you have any questions concerning pension benefits not specifically addressed here, you should contact your local Legal Services office or private attorney.

If you mix exempt and non-exempt funds in a bank account, you may have some trouble calculating what money is exempt. Nevada law recognizes the "first-in/first-out" (FIFO) approach when you mix exempt and non-exempt money in a bank account. *Christensen v. Pack, 149 P.3d 40, 50-51 (Nev. 2006)*. Under FIFO, the first funds deposited in an account are the first fund withdrawn or paid out of the account.

So if you first deposit \$600 of Social Security income into an account, all of this money is exempt. If you then deposit \$200 in gambling winnings into your account, the account then contains \$800 (\$600 exempt and \$200 non-exempt). If you later withdraw \$700, then \$100 is left in the account and all of it is non-exempt. The first \$600 withdrawn was the first in Social Security income. The remaining \$100 of the withdrawal was non-exempt gambling winnings. What is left is \$100 of gambling winnings and a creditor can take all of this. However, the amount is \$1,000 or less and Nevada law provides a blanket exemption of \$1,000 or less for any amount not otherwise exempt.

What property is exempt?

A creditor can execute on any of your non-exempt personal property. Examples of exempt personal property include:

- Jewelry, musical instruments, or other keepsakes not to exceed \$5,000 in value.
- Necessary household goods not to exceed \$12,000 in value.
- Farm equipment, trucks, stock, tools and supplies not to exceed \$4,500.00 in value.
- Tools, instruments, and materials of trade not to exceed \$10,000 in value.
- One vehicle with less than \$15,000 in equity

Any vehicle for use by the debtor or dependent that is modified to provide mobility for a person with a permanent disability.

A dwelling, occupied as a home for yourself and family, where you do not own the land and the amount of equity does not exceed \$550,000 in value. The dwelling may be mobile or manufactured home situated upon lands not owned by you.

A homestead in a dwelling where the amount of equity does not exceed \$550,000. You can file a homestead at any time prior to the sale of your home.

If the judgment is for a medical bill, your dwelling is exempt regardless of the equity and whether you filed a homestead.

What if my creditor attempts to garnish exempt income or property?

You must file an affidavit of exemption with the court, within 8 days of notice of that execution or garnishment. A copy of the affidavit must be served upon the sheriff and the judgment creditor. When the affidavit is served, the sheriff shall release the property to you within 5 days unless you or the judgment creditor files a motion for hearing to determine the issue of exemption. Unless the court continues the hearing for good cause shown, the hearing will be held within 10 days after the motion is filed.

If you do not file the affidavit within the 8 day time period, your property may be sold and the money given to the judgment creditor, even if the property or money is exempt.