

# The Personal Property Exemption:

## Protecting Your Property From Debt Collectors

### What Is a Personal Property Exemption?

The personal property exemption allows a "Head of Household" to keep a certain amount of property free ("exempt") from claims by judgment creditors for payment of debts. The purpose of the exemption law is to assure that families have the necessities of life.

If you have been sued and your creditor obtained a judgment from the court that you owed the money, then the creditor can do two things in order to collect from you: (1) ask the sheriff to "attach" your property to be sold at public auction to raise money to pay on the debt; or (2) get a wage garnishment (it's actually called a "Suggestee Execution") so that your employer will take money out of your paycheck to pay on the debt, before you ever see the paycheck.

The Personal Property Exemption allows the Head of Household (husband, wife, parent, or other head of household) to keep up to \$1,000 of *personal* property "exempt" from the judgment collection process.

### How Does The Personal Property Exemption Work?

When the Judgment Creditor tries to use the judgment collection process, you file with the court a form listing all items of personal property that you own. (For items of small value, you can list them in categories, like "clothing," "records," or "kitchen utensils.") You must state the value of each item or category of property on the list. If all items all add up to more than \$1,000, you must then identify which items you want to exempt from the collection process.

### What Property Can Be Covered?

Any "personal property" can be included. Land or a house is not "personal property." Everything else is: Cash, bank accounts, savings, etc; TV, VCR, stereo, tape player, etc; furniture; washers, dryers, and refrigerators; clothing; beds; books; pictures; cars, trucks, motorcycles, campers; mobile homes; just about anything. You can protect up to \$1,000 worth of these items.

### Can I Exempt \$1,000 Worth of Each Kind of Property?

No. You can only exempt a combined total of \$1,000 worth of personal property items. Any other property you own (like clothes, kitchen utensils, furniture, etc) will be left unprotected.

### If I Own More Than \$1,000 Worth of Property, Which Items Should I Protect?

Protect first the items that are easiest for the creditor to take. Start with money, like your wages and bank accounts, because these are the first things most creditors want. Then protect major appliances that are valuable and easy to re-sell, like TVs, VCRs, stereos, etc. Then protect major items of furniture, like sofas, living room suites and bedroom suites, etc.

This may mean that you leave unprotected some items that are very important *to you*, like your clothes or your kitchen utensils. That's okay, though, because no matter how important they are to you, these items aren't worth much to the creditors. Creditors can't sell your used clothes for much money, and it probably isn't worth their time to try. Most of the time creditors never even attempt to have clothing, utensils and similar items taken for sale by the sheriff.

#### How Do I Decide What The Value Of My Property Is?

The question to ask yourself is what price could you (or the debt collector) actually get if you sold the property to raise money. For example, if you sold your car through the Ad Bulletin, what do you think you could get for it? If you sold your clothes or your furniture at a yard sale, how much could you really get for each item?

You probably paid a lot more to buy the item when it was new than you could get for it now. Buying another new one now probably would cost a lot more than what the old one is worth now. *Neither of those things matter.* The point is, what is your property worth right now? How much could you (or the creditor) realistically get if it were sold? It is possible for an item of property to have no value whatsoever.

#### How Do I Value An Item If I Still Owe Money On It?

In this situation you should go through a two-step process. First, figure out what the item would be worth if you sold it. Second, subtract whatever you still owe from the amount you think you would get if you sold it. Whatever is left is the "true value" or the "equity value" of the item.

For example, suppose you figure you could get about \$300 for your TV by selling it now, but you still owe \$200 on the purchase price. Subtract the \$200 you still owe from the \$300 you could get for it, and the "true value" is only \$100.

As another example, suppose you still owe \$1,200 on your car. The car has some problems now, and you don't think you could sell it for more than \$800. After you subtract the \$1,200 still owing from the \$800 you might get in a sale, your car has a "true value" of zero.

If you have any items on which you still owe money, you must include the name and address of the creditor to whom you owe that money when you file your exemption from the judgment collection process.

#### Do I Have To List Everything I Own, Or Just What I Want To Exempt?

Everything. The law requires that you must list all property. If the total value of everything adds up to more than \$1,000, then you must identify which items you want to exempt and which items you will leave unprotected.

## What About Wages?

Your wages can be exempted, and they are usually the most important item on the list. The amount of money that you earn *in each pay period* is a separate item of "personal property." Each Exemption Sheet will protect only the wages earned during that one pay period. You will have to file a new Exemption Sheet after every payday, in order to protect the wages that will be earned in your next pay period.

## Are All Of My Wages Subject To Judgment Collection By Garnishment?

No. Even without this "exemption" right, West Virginia law places two different limits on the amount of money that a creditor can have garnished (also called "suggested") out of your wages: First, an upper limit on how much can be taken; and second, a minimum amount that must be left for you after the garnishment.

1) The Upper Limit. The creditor cannot take more than 20% of wages in any pay period.

For example, suppose you earn \$150 per week. 20% of this is \$30. That \$30 is the most the creditor can have garnished from your \$150 weekly wage.

2) The Minimum Amount Remaining. The creditor must leave you with weekly wages equal to 30 times the federal minimum wage. In the year 2000 the minimum wage is \$5.15, so the minimum amount that must be left each week is \$154.50.

For example, suppose you earn only \$175 per week. In order to leave you with the required minimum amount of \$154.50 per week, the creditor can get only \$20.50 from your wages of that week (even though that is less than 20% of your total wages of \$175).

## Do I Have to Claim The Total Amount Of Wages As Exempt, Or Only The Amount Subject To Garnishment?

You only need to exempt the portion that is subject to garnishment.

Take the example above where you earn only \$175 per week. The minimum amount of \$154.50 per week cannot be garnished. You should list the \$154.50 per week as "not subject to garnishment," and then claim only the remaining \$20.50 per week as exempt under the Personal Property Exemption.

## How Long Can I Keep Exempting My Wages?

As many times as necessary; as many times as the debt collector keeps trying. (The standard garnishment runs for one year from the date the garnishment was issued. After that, the creditor will have to file a new request for garnishment to keep trying to garnish your wages.)

The \$1,000 limit applies only to the property and wages being exempted *on any one Exemption Sheet*. You can file a new Exemption Sheet for every new pay period. You may have exempted \$1,000 in wages subject to garnishment during the last pay period; you

can do it again in the new pay period with a new Exemption Sheet. You can keep exempting new wages in each new pay period, as long as you file a new Exemption Sheet.

#### When Do I Claim My Exemption?

When the creditor tries to take one of the two judgment collection methods described above, you will be given a notification of what the creditor is doing. That is the time that you must file your Exemption.

#### Where Can I Get Exemption Forms?

The Clerk's Office of the court where the judgment was issued has standard forms to use to file your Exemption.

#### Where Do I File My Exemption?

In the court where the creditor got the judgment against you. If the creditor sued you in Magistrate Court, you must file your exemption in the Magistrate Clerk's Office. If the creditor sued in Circuit Court, file the Exemption with the Circuit Clerk's Office.

#### Do I Have To Send Copies To Anyone?

Yes. You should file the original with the Court, and then send copies to: (1) the sheriff; (2) the creditor; and (3) anyone who is holding property for you, such as a bank that has your account. If you are exempting wages, you should send a copy to your employer.

The sheriff or court clerk is required by law to issue a written release of your personal property. This document must be sent to your employer when you are exempting wages, and copies of this document should be sent to the judgment creditor who is trying to collect from you.

#### How Often Do I Have To Do This?

That depends on whether you are exempting wages or not. As a general rule, you must file a new exemption sheet when there are changes in the property you own.

If you are **exempting wages**, then you need to file a new exemption sheet *EVERY pay period*. The wages you earn in each pay period are a "new" item of property in each pay period. The exemption sheet you filed last pay period does not cover the wages you earn in this pay period. You should file a new exemption sheet (with required copies to everyone) the day after each payday.

If you are **not exempting wages**, then you only need to file a new exemption sheet when you buy new property, sell old property, inherit money, win money in the lottery, or there is some other *significant change in the value of the property you own*.

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