

What you need to know about wage garnishments

Written by Australian Business

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If you owe a creditor money, what can that creditor do to turn that obligation into money in its pocket? It can sue you, win a court-issued judgment, and then attempt to collect that judgment by:-Putting a lien on your house or other real estate you might own-Levying your bank accounts-Garnishing your wages to the extent permitted under state law, or-Forcing you to come to court to answer questions - under oath - about your financial affairs with an eye toward executing judgment on other valuable assets you might own

Since they have so many legal options at their disposal, ignoring collection demands by creditors is, therefore, virtually always a recipe for disaster.

What is a bank levy?

A bank levy is an instruction given to your bank by the County Sheriff's Department directing the bank to turn over (to the Sheriff's Department) the funds in your bank account(s) up to the amount of the creditor's court-issued judgment. The Sheriff's Department, after keeping a portion of the funds as its fee, will turn over the balance to the judgment creditor.

Absent a court order, such as a Chapter 7 or Chapter 13 bankruptcy filing or an injunction, or a message from the creditor that the matter has been settled, the bank must comply with the Sheriff's Department's instructions and turn over the funds.

Many people may wonder how creditors know where they bank. The answer is simple; you have probably sent them payments in the past toward your debt in the form of checks drawn against your bank account. Another possibility is that you may have stated where you banked in the original loan/credit application filed with the creditor.

The creditor also could have learned where you bank during the preceding litigation's discovery process, employed certain computer-based asset searching techniques, or they may even have

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guessed. Creditors have many ways of finding out the information they need.

What is a wage garnishment?

A wage garnishment, also often called an "earnings withholding order," is an instruction given to your employer by the County Sheriff's Department directing the employer to turn over (to the Sheriff's Department) a portion of your paycheck, and to continue garnishing your income each pay period until the creditor's court-issued judgment is paid in full. The amount of income allowed to be garnished varies from state to state, but in California, the law caps the garnishment of a W-2 employee's net pay at 25 percent; a 1099 independent contractor, on the other hand, could see 100 percent of his or her pay garnished.

Similar to a bank levy, absent a court order, such as a bankruptcy filing or an injunction, or an instruction from the creditor that the matter has been settled, the employer must comply with the Sheriff's Department's instruction and turn over the funds.

How does the judgment creditor know where you work? You were probably asked where you work in your original loan application. Of course, your employer might be listed in your easily accessible credit report, or the creditor could have learned your employer during the preceding litigation's discovery process.

How can you best avoid bank levies and wage garnishments?

There are several ways one can avoid bank levies and wage garnishments, including:-Pay the creditor in full. Obviously, this is much easier said than done.-Propose to settle with the creditor by paying a one-time, lump sum amount at a discount off the full balance. Some creditors and their collection agents might accept as little as 10 percent of the original balance owed. Others will refuse to accept anything less than 90 percent of the amount owed. Most will fall somewhere in-between. Note that settling with creditors at a discount could result in income tax liability, as debt for which you are forgiven in a non-bankruptcy context is generally taxable.-Propose to settle with the creditor by paying either the full balance or a discounted sum over a period of time in exchange for suspended collection activity. In other words, you can offer to pay the creditor over a period of, say, two or three more years, in exchange for which the creditor will agree that, provided payments are received on a timely basis, it will not levy your

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bank account, garnish your wages or employ other collection activities against you.-Move to a foreign country and leave no assets behind, making it very costly if not impossible for the creditor to continue its collection efforts.-File for Chapter 7 or Chapter 13 bankruptcy. The minute you file bankruptcy, an "automatic stay" goes into effect, so not only will you be forever discharging your debt to the creditor, but you'll put an immediate halt to judgment creditors' bank levies and wage garnishments. Funds already turned over by the Sheriff's Department to the creditor will not likely be retrievable, but funds still in the possession of the Sheriff's Department at the time the bankruptcy petition is filed should be returned to you under the law.

Getting the help you need

Of you are behind in paying your creditors and have no readily available ways to pay them (savings, accessible retirement funds, family assistance, etc.), then it's only a matter of time before those creditors sue and ultimately attempt to levy your bank accounts, garnish your wages and take other aggressive steps to recover their money, money that you need to pay mortgage payments or rent, utilities, insurance bills or medical expenses, and to buy food for your family. The earlier you seek advice from an experienced bankruptcy attorney, the sooner you'll have a viable "game plan" for moving forward.