

DEBT COLLECTION

Know Your Rights: A Fact Sheet from Nevada Legal Services, Inc.

What are my rights if I am contacted by a collection agency attempting to collect a debt?

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

- Collectors should not contact you at unusual times or places. Generally, any contact before 8:00 am or after 9:00 pm violates the FDCPA.
- If your employer prohibits contact at work, once you advise the collector they must stop all communication with you at work.
- Collection attempts cannot be threatening (jail or physical harm). They also cannot threaten to tell others about your debt to embarrass you.
- If you want to dispute the debt, 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 (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 debt, court costs and attorney's fees. You should receive a summons and complaint, which will state the amount the creditor is suing for and demand either that you answer in writing within 20 days of the date of service, or you appearance in court at a specified time. If you do not believe you owe the debt or disagree with the amount, you need to file an answer.

If you do not file an answer or go to the hearing the creditor can get a default judgment against you. Once there is a judgment, the court has ruled you owe the money. A judgment remains in effect in Nevada for six years, and can be renewed forever. Executing a judgment 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 less than \$770 a week then only 18% of your wages are subject to garnishment. If it is more than \$770 a week, then 75% of it is exempt from garnishment and 25% is subject to garnishment. Multiply your income by 0.18 or 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.



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Resources

You can access additional information and forms on the NLS website at nlslaw.net.

You can also check out our YouTube videos at our Nevada Legal Services Now! Channel.

What types of income and property are exempt from execution?

- Social Security, SSI, SSD (NRS 21.090(1)(y) and 42 U.S.C. § 407(a))
- Public assistance such as TANF or food stamps (NRS 21.090(1)(kk) and 422A.325)
- Unemployment Compensation (NRS 21.090(1)(hh))
- Disposable earnings under \$362.50 per week (NRS 21.090(1)(g))
- Veteran's Benefits (38 U.S.C. § 5301.)
- \$10,000 or less of money or personal property, which is not otherwise exempt under NRS 21.090. (NRS 21.090(1)(z))
- PERS (Public Employee's Retirement System) or FERS (Federal Employee Retirement System) or CSRS (Civil Servant Retirement System) (5 U.S.C. § 8346)
- Worker's Compensation (NRS 21.090(1)(gg))
- Child support or alimony income (NRS 21.090(1)(s)-(t))
- Jewelry, musical instruments, or other keepsakes not to exceed \$5,000 in value (NRS 21.090(1)(a))
- Necessary household goods not to exceed \$12,000 in value (NRS 21.090(1)(b))
- Tools, instruments, and materials of trade not to exceed \$10,000 in value (NRS 21.090(1)(d))
- One vehicle with less than \$15,000 in equity (NRS 21.090(1)(f))
- Any vehicle for use by the debtor or dependent that is modified to provide mobility for a person with a permanent disability (NRS 21.090(1)(p))
- A homestead recorded pursuant to NRS 115.010 on a dwelling (house, condominium, townhome, and land) or a mobile home where the judgment debtor's equity does not exceed \$550,000 (NRS 21.090(1)(l))
- A dwelling, occupied by the judgment debtor and his family, where the amount of his equity does not exceed \$550,000, and he does not own the land upon which the dwelling is situated (NRS 21.090(1)(m))
- If the judgment is for a medical bill, your dwelling is exempt regardless of the equity and whether you filed a homestead (NRS 21.095)

This list is not exhaustive. Additional exemptions are listed in NRS 21.090.

Please note: If you have government benefits deposited into your bank account, NRS 21.105 protects \$2,000 from attachment by any creditor.

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

You must file an affidavit of exemption with the court within 10 days of notice of execution or garnishment. A copy of the affidavit must be served upon the sheriff and the judgment creditor. When the affidavit is served, the creditor has 8 judicial days to object to the claim of exemption and request a hearing. The hearing must be held within 7 judicial days after the objection is filed. If no objection is filed, the sheriff shall release the property to you within 9 judicial days. A hearing on exemptions will be held within 10 days after the motion is filed.

If you do not file the claim of exemption is not filed within the 10 day time period, your property may be sold and the money given to the judgment creditor, even if the property or money is exempt.

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 to attempt to negotiate a payment plan. You may also consider 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 and potentially keep non-exempt assets. 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.

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.