

# How to Use a Challenge to Garnishment & Exempt Money, Wages and Property

**IMPORTANT:** This information is for general educational use only. **It is not a substitute for the advice of an attorney.** If you have a specific legal question, you should contact an attorney. The information in this flyer is accurate as of July 2011. Please remember that the law is always changing through the actions of the courts, the legislature, and agencies.

**TIME LIMIT WARNING:** Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other — shorter — time limits that apply in other cases. Ask a lawyer about the time limits that could apply in your situation.

## How to Use a Challenge to Garnishment

The law says that some property, wages, and money are **exempt** from collection — which means they cannot be taken from you to pay unpaid rent or other money you owe. (See “[Exempt Wages, Money and Property](#)” below for a list of these items.) If you believe that the person you owe is garnishing exempt wages or money or is taking exempt property, you may file a Challenge to Garnishment so you can keep the money or property. You should only file a Challenge to Garnishment if you have good reason to believe that one of the exemptions listed below applies to your wages, money, or property. But, when a landlord or lender uses the sheriff to take your property or mobile home, you may not be permitted to use a Challenge to Garnishment to get the property back. Contact a lawyer to find out.

After you file a Challenge to Garnishment, there will be a hearing in court and a judge will decide if you will be able to keep the money or property.

### Where Do I Get a Challenge to Garnishment Form?

You will receive the Challenge to Garnishment papers when your wages or bank account are garnished or when the sheriff takes your property.

### When Should I File a Challenge to Garnishment?

You must file the Challenge to Garnishment form within 120 days of receiving the garnishment papers if you are claiming an exemption for wages or salary that the landlord is trying to garnish. But if you are trying to claim that any other money or property is exempt from

garnishment, you have only 30 days from the date you received the papers to file your Challenge to Garnishment. Generally, you should try to file the Challenge to Garnishment as soon as you can.

## How Do I File a Challenge to Garnishment?

- 1) Fill out the Challenge to Garnishment form. The landlord's name should be written on the line for the "plaintiff." Write your name on the "defendant" line. List the property or money that you believe is exempt and should not be taken. To explain why the property is exempt, look at the list below and copy from the list the exemption that applies.
- 2) Make a copy of the completed form for you to keep. Take the original to the court clerk at the courthouse or mail the Challenge to Garnishment to the clerk at the address listed on the garnishment papers.
- 3) Ask the court clerk when your court hearing will be held.
- 4) Get ready for the hearing by making sure you can give evidence about the value of the things you are claiming and which exemptions they fall under. It is a good idea to write some notes to use at the hearing.
- 5) Go to the hearing on time. If you can, bring someone with you for personal support.
- 6) Present your information to the judge clearly and briefly. Respond to questions politely. Keep calm.
- 7) Give the order signed by the judge to the sheriff or person holding your things and claim them. You should argue that you do not owe storage costs because that would defeat the purpose of the exemptions, which is to make sure that you can keep your basic necessities of life.

## Exempt Wages, Money and Property

- 1) Exempt wages: If you are paid weekly, \$218 per week of your disposable income, or 75% of disposable wages, whichever is more. Wages paid every two weeks - \$435; Wages paid twice each month - \$468; Wages paid once a month - \$936.
- 2) Social security (including SSI).
- 3) Public assistance (welfare).
- 4) Unemployment benefits.
- 5) Disability benefits.
- 6) Workers' compensation benefits.
- 7) All Social Security and Supplemental Security Income (SSI) benefits and up to \$7,500 in exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits that are held in a bank account.
- 8) Spousal support, child support, or other support if necessary to support you or your dependents.
- 9) A house, mobile home or floating home (houseboat) that you or certain family members live in up to \*\$40,000 (\*\$50,000 if more than one owner owes the debt). Includes proceeds from sale for (1) year (if you intend to use funds to buy another home).
- 10) Household goods, furniture, radios, 1 television set, and utensils to \$3,000.
- 11) \*Automobile, truck, trailer, or other vehicle to \*\$3,000
- 12) \*Tools, implements, apparatus, team, harness, or library necessary to carry on your occupation to \$3000.
- 13) \*Books, pictures, and musical instruments to \$600.
- 14) \*Clothing, jewelry, and other personal items to \$1800.
- 15) Domestic animals and poultry for family use to \$1,000 and their food for 60 days.
- 16) Provisions (food) and fuel for your family for 60 days.
- 17) One rifle or shotgun and one pistol to \$1000.
- 18) Public or private pensions.
- 19) Veterans benefits and loans.
- 20) Medical assistance benefits.
- 21) Health insurance proceeds and disability proceeds of life insurance policies.
- 22) Cash surrender value of life insurance policies not payable to your estate.
- 23) Federal annuities.
- 24) Other annuities to \$250 per month, excess over \$250 per month subject to same exemption as wage.
- 25) Professionally prescribed health aids for you or your dependents.
- 26) \*Your right to receive, or property traceable to:
  - a. An award under any crime victim reparation law.
  - b. Payment, not exceeding \$10,000, on account of personal bodily injury, (not including emotional pain & suffering or compensation

for actual monetary loss) of you or an individual of whom you are a dependent.

- c. A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.

27) \*Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

28) The difference between what you actually owe the creditor and the total amount due listed in the Debt Calculation Form\*\*, if the amount listed in the writ is larger.

29) Your right to receive the federal earned income credit.

30) \*Elderly rental assistance payments received from the Oregon Department of Revenue.

31) Equitable interests in property.

32) Security deposits or prepaid (last month's) rent payments held by your landlord.

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\* If two or more people in your household owe the judgment, each may claim the exemptions marked by "\*\*".

**Note:** The values listed represent your **equity** in the property.

\*\* ORS 18.658 states that a Debt Calculation Form (available in ORS 18.832) must be served on the debtor, along with a copy of the writ of garnishment, a notice of exempt property and a challenge to garnishment form.