

How to Collect a Judgment

You will have to collect your money yourself if you win in Court.

The court will not collect the judgment for you. Go to the Justice Court and request the forms for a Writ of Execution specifying if it is for wages or a bank account. Next contact the sheriff's office or a private levying officer to serve the writ. Judgments entered beginning October 1, 2001 are valid for 10 years. You are entitled to interest at 10% per annum beginning with the date of the entry of judgment and to payment for some of your costs incurred in collecting the judgment. After you collect your judgment, you **must** file a Satisfaction of Judgment with the clerk of the justice court.

You cannot serve the writ of execution. It must be served by the sheriff's office or a private levying officer. The defendant's social security number is required for an execution. The writ is in effect 120 days from the date of issuance and may be served multiple times by the officer during that period. After 120 days a new writ will need to be issued if the judgment is not satisfied.

Some things you can do to try and collect the money owed you.

If the person who owes you money, called the judgment debtor, refuses to pay you the following are procedures you can do to try and collect your judgment:

1. Garnish the Debtor's Wages.

A wage garnishment orders the debtor's employer to give you part of the debtor's wages until the debt is paid. Federal and state law places limits upon the amount of earnings subject to garnishment.

To garnish wages, bring your judgment to the clerk of court and ask for a writ of execution and take it to the sheriff or levying officer. You will have to provide the server with the debtor's SS#, employer's name and address. If the debtor is self employed you do not request a writ of execution to garnish wages, but you may levy upon moneys owed by another person to the judgment debtor.

2. Levy upon the Debtor's Bank Account.

Get a writ of execution from the clerk specifying that it is for a bank account. Once completed, take it to the sheriff or levying officer. This means that money will be taken from the debtor's bank account to pay the judgment. You will need to provide the server with the debtor's SS#, the name, address, and branch of the bank.

3. File a Transcript of Judgment with the District Court.

Filing a Transcript of Judgment with the district court puts a judgment lien on any land, house, or other building the debtor owns in the county where the transcript is filed. File the transcript in all counties where the debtor may own property. If the property is sold, the debt will be paid out of the proceeds of the sale. The judgment lien is valid for 6 years. The judgment lien will also put a lien on property the debtor may buy in the future and prevent the debtor from refinancing any property until the debt is paid. Bring your judgment to the clerk and ask for a Transcript of Judgment. Take it to the clerk of district court to file it. There is a fee to file the transcript.

4. Levy upon the Debtor's Personal Property.

To levy upon the personal property of the judgment debtor get a writ of execution from the court and take it to the sheriff or levying officer. You will need to describe the personal property to be levied upon.

Some personal property is exempt from execution, i.e. one motor vehicle not to exceed \$2500.00. Personal property (clothing, furnishings, animals, crops) not to exceed \$4500.00 in aggregate value (Each item must be worth less than \$600). There are other exemptions. If the judgment debtor used the property to secure a loan or to purchase the property, the security lien of the bank or finance company must be paid before any moneys from the execution will be applied to your judgment.

There are some other ways to try and collect judgments:

1. Have the Sheriff or Levying Officer do a Till Tap.

If the debtor is a business with a cash register, the sheriff or levying officer can go to the business and take enough money out of the register to pay the judgment and their fees. Get a writ of execution from the clerk and complete it. If there is not enough money in the register to pay the judgment, you will have to pay another fee each time the server goes back.

2. Hold a Judgment Debtor Hearing.

A judgment debtor hearing requires the debtor to come to court and answer your questions about his/her salary, bank accounts, property, and anything else that could be used to pay the judgment. If you wish, you can subpoena bank books, paycheck stubs, records, etc, before the hearing. You will need a subpoena duces tecum to obtain the records.

A judgment debtor hearing is not automatically set by the court. You must petition the court for a supplemental hearing to examine the judgment debtor. Your petition **must** be accompanied by an affidavit showing that a writ of execution was issued **and** returned to the court and that the debtor is withholding property from execution. No supplemental hearing will be set prior to the issuance of a writ of execution. If you want specific information or items to be brought to the hearing by the debtor issue a subpoena duces tecum listing the items. Have a server serve the subpoena on the defendant.

3. Suspend Debtor's Driver's License.

If you received a judgment for damages in a motor vehicle accident case and the judgment is not paid within 60 days, you can have the debtor's driver's license suspended until the judgment is paid. The license can not be suspended for more than 6 years from the date the judgment was entered.

To get the license suspended go to the court and request in writing that a certified copy of the judgment be sent to the MT Department of Motor Vehicles. Give the clerk a copy of the accident report. You will need to provide the clerk with the defendant's birth date, driver's license number, and address. The clerk will not send the judgment to Motor Vehicles without a written request from you.

PRAECIPE

IN THE JUSTICE COURT, THE COUNTY OF PARK, IN THE STATE OF MONTANA.

Plaintiff(s)/Petitioner(s)

Case Number: _____

Vs.

Defendant(s)/Respondent(s)

To the agency: _____

Type of papers to serve: Summons & Compliant Answer with Counter Claim

WRIT and Notice to Levying Officer WRIT or Possession

Temporary Order of Protection & Petition for Temporary Order of Protection,

Permanent Order of Protection

Other _____

Please serve the attached papers to (Name of Defendant(s) or Respondent(s):

Physical Address: _____

Phone number(s): _____

Place of Employment (if known): _____

Address and Phone number of employer: _____

**Name and Signature of
Plaintiff(s)/Respondent:** _____

Address: _____

Phone number(s): _____

Email Address _____

Dated this _____ day of _____, 20_____.

IN THE JUSTICE COURT OF RECORD
 CITY OF LIVINGSTON, PARK COUNTY, STATE OF MONTANA
 BEFORE CLAY HERBST, JUSTICE OF THE PEACE

_____)
 _____)
 _____)
 Plaintiff(s), _____)
 _____)
 vs _____)
 _____)
 _____)
 Defendant(s). _____)

WRIT OF EXECUTION
 CASE # _____

THE STATE OF MONTANA TO THE SHERIFF, CONSTABLE, ANY AUTHORIZED SERVER OR LEVYING OFFICER OF PARK COUNTY:

WHEREAS, on the _____ day of _____, 20_____, the Plaintiff recovered a Judgment in the above Justice Court, against the Defendant(s) for the sum of:

ORIGINAL JUDGMENT:		\$ _____
ACCRUED INTEREST OF _____ % PER YR: (+)		\$ _____
COSTS AFTER JUDGMENT:	(+)	\$ _____
LESS PAYMENTS RECEIVED:	(-)	\$ _____
BALANCE DUE:		\$ _____

Together with all costs of execution and/or for personal property describe as follows: _____

(attach additional description, if necessary)

NOW, you the said Levying Officer, are hereby required to make the said sum due on the said Judgment or damages, with interest aforesaid, and costs, commissions and accruing costs, to satisfy the balance due on said Judgment amounting to the amount stated above as of this date out of the PERSONAL PROPERTY of said debtor NOT EXEMPT FROM EXECUTION on the day whereon said Judgment was docketed in said County, or at any time hereafter, and make return this writ not less than ten (10) days nor more than one hundred twenty (120) days after your receipt subscribed thereon, with a record of your actions endorsed thereon.

DATED this _____ day of _____, 20_____.

 Justice of the Peace/Clerk

RETURN OF SERVICE

STATE OF MONTANA, County of Park

I _____, affirm that I served a copy of this Writ upon _____ on
_____ at _____ o'clock ____ M.
(date) (gamishee)

Dated this _____ day of _____, 200__.

Service \$ _____
Mileage \$ _____
Total \$ _____

Sheriff/Process Server

By _____
Deputy Sheriff/Process Server

IN THE JUSTICE COURT OF RECORD
CITY OF LIVINGSTON, PARK COUNTY, STATE OF MONTANA
BEFORE CLAY HERBST, JUSTICE OF THE PEACE

_____))
_____))
_____))
Plaintiff(s),)
_____))
vs)
_____))
_____))
_____))
Defendant(s).)
_____)

NOTICE OF EXECUTION LEVY
CASE # _____

TO: _____

NOTICE OF JUDGMENT

The Plaintiff, _____, obtained judgment against the Defendant, _____, on the _____ day of _____, _____.

NOTICE OF SEIZURE

Please be advised that the following property was seized by _____ under the authority of the Writ of Execution attached to this NOTICE:

Said property is now in the possession or custody of the above-named process server.

NOTICE OF PROPERTY EXEMPT FROM CREDITORS

Under the law SOME PROPERTY IS EXEMPT FROM SEIZURE. Below are listed many common types of exempt property to help you decide whether the property is exempt. NOTE: The lists below do NOT contain all possible exemptions. The exemptions listed below do NOT apply to property used as collateral under a note or security interest.

Further information as to exemptions from execution may be obtained by examining Title 25, Chapter 13, Part 6, Montana Code Annotated.

1) Wages and Support Payments

Under federal and state law, your wages are exempt up to the larger of the following two (2) amounts:

- a) 75% of your net wages; or
- b) 30 times the federal minimum hourly wage for each work week.

NOTE: If you are required to pay maintenance or support for any person, only 50% to 65% of your wages may be exempt, depending on the circumstances.

2) Cash Assistance from the Government

General cash assistance from the Government is entirely exempt; for example, Social Security, Veteran's pensions, AFDC payments and disability payments are entirely exempt. Child support payments may be entirely exempt. The money from any of these sources may be exempt even if it is deposited into a bank account.

3) Motor Vehicles

A car or truck is exempt up to a value of \$2,500.

4) Necessary Personal and Household Property

Personal property such as clothing, household furnishings, animals and crops are exempt up to \$4,500 total value. (Each item must be worth less than \$600).

5) Tools of Trade

Tools of trade are exempt up to \$3,000 total value.

6) Homestead

Your family home may be exempt up to \$60,000. However, to claim this exemption you must file a form called a Declaration of Homestead with the County Clerk and Recorder.

NOTE REGARDING BANKRUPTCY: If you currently have a case in bankruptcy court, the only valid writ is one issued by the bankruptcy court.

The statutory citations above are subject to change, and this list of exemptions is not intended to be complete.

NOTICE OF RIGHT TO A HEARING AND PROCEDURE FOR RETURN OF PROPERTY

If you think the Sheriff or private process server has taken exempt property under a writ, tell this to the Clerk of the Justice Court at the County Courthouse, 414 East Callender, Livingston, and file with the Court a Notice of Claimed Exemptions. **YOU MUST USE THE APPROVED FORM.** Ask the Clerk to set a hearing date.

YOU MUST FILE THE NOTICE OF CLAIMED EXEMPTIONS WITHIN 10 WORKING DAYS (EXCLUDING HOLIDAYS AND WEEKENDS) OF THE DATE OF SERVICE OF THE NOTICE OF EXECUTION EXEMPTIONS OR WITHIN 10 DAYS OF THE DATE OF ITS MAILING TO BE ELIGIBLE FOR A HEARING ON CLAIMED EXECPTIONS.

You **MUST** also mail a true and correct copy of your Notice of Claimed Exemptions to the Sheriff or process server having possession of your property and to the judgment creditor or counsel of record for the judgment creditor. Failure to file a claim of exemption within 10 working days will result in the sheriff or process server releasing the monies executed upon or proceeding forward with an execution sale of any property obtained.

Once you have properly filed your claim, the court will schedule a hearing within 10 days. The Clerk of the Court will notify you and the judgment creditor or attorney of the date and time of the hearing, by telephone, by mail, or in person.

At this hearing you may explain why you believe the property taken is exempt. The judgment creditor may present its evidence. The Judge will then decide if the property taken should be returned to you.

REMEMBER THAT THIS IS ONLY A PARTIAL LIST OF "EXEMPT PROPERTY". You may wish to consult with an attorney who can advise you of your rights. If you cannot afford one, there are listings of legal assistance and legal aid offices in the yellow pages of the telephone book.

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED BY THE SHERIFF OR PRIVATE PROCESS SERVER WILL BE USED FOR THAT PURPOSE.

DATED this ____ day of _____, 20_____.

Sheriff/Process Server name

The undersigned does hereby certify that on the ____ day of _____, _____, a true and correct copy of the foregoing notice was mailed to the following by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

Sheriff Civil Clerk/Process Server

FEDERAL LAW RESTRICTING WAGE GARNISHMENTS

The laws for wage garnishment are complicated. The law bases how much of your wages may be garnished on your weekly **disposable earnings**. Disposable earnings are the part of your paycheck leftover after mandatory withholdings. Common mandatory withholdings are:

- FICA,
 - Medicare,
 - State and federal tax withholdings,
 - Union dues, and some other already-existing garnishments.
- Bills that you must pay, like rent, utilities, and medical bills are not factored into how much a debt collector may garnish from your wages. The only thing that matters when figuring out how much a debt collector may take from your paycheck is how much you make.

The law in Montana protects the following amounts of your wages from garnishment:

- No garnishment is allowed if your weekly disposable earnings are less than \$217.50 per week.
- If your weekly disposable earnings are more than \$217.50 but less than \$290.00, only the amount over \$217.50 can be garnished.
- If your weekly disposable earnings are more than \$290.00, no more than 25% of those earnings can be garnished.

If you get paid bi-weekly, semi-monthly, or monthly, the calculation works a bit differently than described above. You can download the Exemptions Worksheet below to calculate how much of your paycheck is exempt from garnishment.

If someone has taken more than they should from your wages, you only have 10 business days to file court paperwork to ask for it back. The paperwork that you would file with the Clerk of Court is called a *Notice of Claimed Exemptions*.

If you still aren't sure if your income is exempt, it is a good idea to talk to a lawyer.

Montana Code Annotated

<https://leg.mt.gov/bills/mca/index.html>

MCA 25-13 Execution of Judgment

https://leg.mt.gov/bills/mca/title_0250/chapter_0130/parts_index.html

MCA 25-23 Rules of Civil Procedure

https://leg.mt.gov/bills/mca/title_0250/chapter_0230/part_0010/sections_index.html

Notice of Claimed Exemptions

<https://courts.mt.gov/external/library/forms/civil/district/seizure.doc>