

State Exemption Laws Can Help Protect Income and Assets from Debt Collectors

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Older adults are entering retirement with more debt, including credit card and student loan debt, than in past decades. Those with fixed incomes and dwindling resources are experiencing problems repaying that debt and face aggressive debt collection measures. A collector may file a lawsuit and win (often by default). The court will then enter a judgment against the debtor. The judgment gives the collector the right to force the debtor to pay using a variety of methods.

In theory, a debt collector may be able to seize a car, home or other property after securing a court judgment. However in practice, state and federal law dramatically limit its ability to do so. Every state has laws that protect a variety of income and property from judgment creditors. These laws are called “**exemption laws**.” Exemption laws are designed to ensure that debtors do not become completely destitute from the payment of debts and to preserve some small amount property for the basic necessities of living.

This Practice Tip provides brief information on exemption laws and how these laws can protect the income and property of older adult clients:

1. Exemption laws require that debtors be informed about their right to claim an exemption.

Debtors will receive a notice from the sheriff informing them that a debt collector has requested the seizure of their personal property. Typically, older adults will receive a notice after a creditor attempts to enforce a judgment entered by the court.

Debtors may also experience a garnishment. Garnishment occurs when a creditor seizes a debtor’s income to satisfy a debt, sometimes without prior notice. If income is seized, debtors must receive a notice which informs them that a garnishment has occurred, describes major legal exemptions from garnishment, and what procedures the debtor can follow to challenge the garnishment.

2. Debtors have the right to go to court and claim the exemptions to protect their property.

Exemptions are automatic in some states, however, in most states, debtors must respond in a timely way to the seizure notice to be able to claim the exemptions.

3. State exemption laws typically protect specific income, assets and property. While exemptions vary by state, states typically protect property and income, such as:

- Household goods
- Clothing
- A small amount of value in automobiles
- Some money in bank accounts
- Tools of the trade, up to a specific limit, used to earn a living
- A portion of the debtor’s wages
- State benefits such as welfare, unemployment and worker’s compensation
- Pension and retirement benefits
- Some states have a “wild card” amount that can be applied to any property.

4. **The debtor's home may be protected.** A state exemption statute applying to personal property does not apply to the debtor's home, as it is considered real estate. Separate "homestead exemptions" apply to the debtor's home. The types of property that are considered personal property will be specified in specific state law.
5. **Federal and state statutes also address exempted income.** For example, Social Security benefits or state employees' pension, also include exemption protections. Special exemption rules are also sometimes found in statutes dealing with a certain type of debt, such as tax debt.
6. **State exemption laws can be very complicated and each state's law, procedures and protections are different.** Generally, older adults can *prevent* the seizure of exempt property by filing a notice of exempt property or by taking similar steps specified by their state law. When assisting a client with the debt collection process, it is important to understand each state's specific process. For more information on state exemption protections, please consult the additional resources below or contact NCLER for a case consultation.

Additional Resources

- National Consumer Law Center, [Debt Collection](#)
- National Consumer Law Center, [Collection Actions](#)
- National Center on Law & Elder Rights, Chapter Summary, [Legal Basics- Debt Collection Protections for Older Consumers](#)
- National Center on Law & Elder Rights, presentation slides: [Debt Collection Protections for Older Consumers](#)

Helping a client with debt issues? The National Consumer Law Center provides legal professionals with advice on consumer issues as part of NCLER's case consultation service. Through this service, Justice in Aging, the National Consumer Law Center, and the ABA Commission on Law and Aging provide free case consultations to legal and aging network professionals on a range of legal issues impacting older adults.

Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at NCLER.acl.gov.

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