

Can a creditor take money directly out of my bank account if I owe the creditor money?

Sometimes this may be possible. If you have money in a savings or checking account with a bank, credit union, savings and loan, or similar institution, creditors may try to take (or “seize”) money in the account to pay a judgment the creditor has against you.

Generally, the creditor can do this only after you have been sued and after the court has granted a judgment against you. Sometimes, however, a creditor can go after your bank account even if there has not yet been a judgment. This can happen when the debt involves tax seizures and child support matters. Another exception is the “setoff,” which is explained further below. You should seek legal advice if you have these types of debts.

How does a judgment creditor seize my bank account, and what are my rights?

If the creditor follows proper legal procedures, your account will first be “frozen” by a court order. When your account is frozen, you cannot take any money out of the account. You will not necessarily be notified in advance that your account will be frozen. Usually, your first notice will come from the bank that your account has been frozen.

However, you have important rights if a creditor tries to freeze and seize your account, including:

- a. Notice of the “freeze”;

- b. Certain funds which are exempt from seizure; and
- c. A prompt hearing to release any exempt funds.

What kind of notice should I get?

Your bank must send you a written notice within one working day of the freeze on your account. The notice must include:

- a. Notice that your account has been or will be frozen;
- b. Notice that under law, certain funds are exempt from seizure;
- c. Notice of your right to a prompt hearing; and
- d. The Court's address and number, and a form you can use to ask for a hearing.

Are there some funds in the account that creditors cannot take?

Yes. The following funds are exempt from seizure, even after they have been put in an account. “Exempt” means that by state or federal law, the funds cannot be seized by creditors to pay a judgment or for any other purpose. These funds include:

- a. Social Security benefits;
- b. Veterans benefits;
- c. Certain retirement and disability pension benefits;
- d. One Hundred Dollars (\$100) of any other funds; and
- e. Some or all funds from joint depositors.

Certain other funds may be exempt. See an attorney and/or request a hearing if you have any doubt about whether the money in your account should be exempt or not.

How do I request a hearing, and what happens at the hearing?

To get a hearing, immediately fill in the form you received with your notice. Make two copies; keep one and send the other to the creditor's attorney (or the creditor if there is no attorney.) Send it or take the original form to the court. The court should set the hearing in five days or less. Call the court to get the hearing date and time.

Before you go to the hearing, make a list of all sources of the money in your account. If you have Social Security, Veterans', or pension benefits, bring documents from the Social Security Administration, Veterans Administration, or pension fund proving you get these funds and how much you get. If you have both exempt and nonexempt funds in your account, it is important that you calculate, as accurately as possible, how much of your account comes from each source.

Bring this information with you to the hearing, and refer to it while testifying. Be on time for the hearing. The Court will decide what part of the account is exempt and therefore must be returned to you.

Note that your bank may deduct up to \$30 from your account for processing the papers, \$15 of which goes to satisfy the judgment. If your account is exempt, however, you get this money back.

Also note that if you do not request the hearing, your account may be frozen for up to 90

days, and all funds (up to the amount you owe) may be taken by the creditor.

What if another person's name is on my bank accounts?

If your spouse or anyone else is a joint depositor in your account, he or she has the same rights to notice and hearing as you do.

If the joint depositor also has a judgment against him or her in the same case, your joint depositor has the same exemptions as you do. If this person was not sued, however, none of his/her contributions may be taken from the account. It is very important that, before the hearing, both depositors figure out how much money each has put into the account over the past few months.

What is a "setoff?" How does it differ from a seizure of bank accounts?

The right to "setoff" exists if your creditor is the bank or institution at which you have your account. For example, if you have fallen behind on a loan to ABC Bank, and your savings account is also at ABC Bank, the bank may have the right to "setoff." The bank is allowed to take funds from your account to pay the loan or debt, without your consent, and without the right to a hearing. Note, however, that the bank still may not seize Social Security, Veterans, or other exempt funds.

When should I seek legal assistance?

You should seek legal assistance if you believe your account was wrongfully frozen,

seized, or set-off, if you did not receive proper notice or were denied a hearing, if you believe exempt funds (like Social Security) were taken, or if you believe the judgment was wrongfully entered against you. If you are unable to hire a private attorney, you can contact your local legal services office.

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ILS Office Contact Numbers

Bloomington: (812) 339-7668
1-800-822-4774

Hammond: (219) 853-2360

Columbus: (812) 372-6918
1-866-644-6407

Indianapolis: (317) 631-9410
1-800-869-0212

Evansville: (812) 426-1295
1-800-852-3477

Lafayette: (765) 423-5327
1-800-382-7581

Fort Wayne: (260) 424-9155
1-888-442-8600

New Albany: (812) 945-4123
1-800-892-2776

Gary: (219) 886-3161
1-888-255-5104

South Bend: (574) 234-8121
1-800-288-8121

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This is for information only. It is not legal advice. For legal advice, contact an attorney or a Legal Services office.

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