

Can a creditor take my property?

In some circumstances a creditor can take your property to pay a debt you owe. Creditors usually prefer to garnish your wages, but if you have property the creditor might try to take some property to pay the money you owe.

What is a lien?

A lien is a claim a person makes on your property if you owe money to that person. Judgment liens and security liens are different kinds of liens, but all liens mean someone owes money to someone else.

If you owe money that you are not paying, the creditor can sue you for what you owe. If the creditor proves in court that you owe the money, the creditor will get a judgment against you. The judgment can include not only the amount of the debt but also other expenses that your contract with the creditor says you must pay. These other expenses may include the creditor's attorney fees, interest, and late charges.

What is a judgment lien?

If you have been sued and the court says that you owe money; that is a judgment lien. If you own real estate, the judgment is automatically a lien on your real estate property.

Can the creditor take my property to pay a judgment?

Your property can be sold to raise the money you owe, but you do have some protections. Before your property can be taken and sold to satisfy a debt, the creditor and you must go to court for a Proceedings Supplemental hearing. At this hearing, the court finds out what assets and income you have and whether you are able to pay the judgment. Some of your assets and income are protected (exempted) from creditors, but you have to go to the court and ask for the exemptions.

What are exemptions?

If your property is exempt, your creditors cannot take or sell the property to collect a debt. You must tell the court if you believe your property should be exempt. Following are the basic exemptions:

- ◆ \$7,500 for a house or mobile home if you are single;
- ◆ \$15,00 for a house or mobile home if you are married and both spouses owe the creditor (if only one spouse owes, this property cannot be touched).
- ◆ \$4,000 for other real estate or personal property (household goods, cars, clothes, your cash);
- ◆ \$100 in bank accounts, stocks, bonds;
- ◆ All health aids and some retirement or pension funds.

The total amount of all property that can be exempted is \$10,000 for a single person and \$20,000 for a married couple.

What can my creditor do to get my property after a judgment is entered against me?

The creditor can apply for a "writ of execution" to sell your property if the equity value is higher than your exemptions. Equity is the value of the property minus the amount you owe for it. For example, if you have a car that is worth \$7,000 but you owe \$6,000 for the car, your equity value for the car is \$1,000 (\$7,000-\$6,000). You have an exemption of up to \$4,000 for personal property. You can claim the car as exempt (\$1,000), and the creditor cannot make you sell the car to pay your debt. You will still have \$3,000 left in exemptions for other personal property.

If your assets are more than the exempt amounts, the creditor can ask the court to execute the judgment.

What is execution of the judgment?

Execution is the process of selling the property to pay off the debt. The court will issue a writ of execution (instructions for the Sheriff to follow). The writ of execution must state the details of the judgment that created the lien, such as the parties, the debt, the date and where the judgment was entered. The writ will order the Sheriff to take your property that is not exempt to pay the judgment. You must first tell the court

what property you think is exempt. If you do not, the Sheriff can take any property.

What happens after the Sheriff takes my property?

The property will be sold. The creditor will get the money raised by the sale of the property. If there is money left over, you will get it. There are rules to make sure that the sale is fair. If there is not enough money from the sale to pay off the debt, you may have other property taken (by writ of execution) until the judgment is paid.

How long does the creditor have to take my property?

The creditor has up to 10 years to get a writ of execution on your property. The creditor can get a writ after 10 years with permission of the court if the creditor can show that you should be able to pay the debt because of changed circumstances.

What is a security lien?

A security lien is usually on property that you purchase with a payment plan. If you buy a refrigerator using a credit plan arranged through the store, the store keeps a security interest (a lien) on the refrigerator. If you do not make your payments on time, the store is usually able to take back the refrigerator.

Anytime you use your property as collateral for debt (such as using the car as collateral for the car loan) the lender may take

possession of the property you used as collateral if you don't pay the debt. This is call repossession.

If you purchase land or a house, the security interest is called a mortgage. If you do not pay the mortgage, the company can foreclose upon your home. This means the company can take and sell your home to pay the mortgage.

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