

GARNISHMENT

HOW TO FILE AN EXEMPTION REGARDING WAGES OR MONEY IN A BANK ACCOUNT

Updated 7/9/07

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What is Garnishment?

A garnishment is a means of collecting a monetary judgment against a judgment debtor. The judgment creditor requests a court to order a third party to pay money, otherwise owed to the judgment debtor, directly to the judgment creditor.

For a discussion of the garnishment process in Virginia, see *In re Richard E. Meyer*, 211 B.R. 203 (U.S. Bankruptcy Court for the Eastern District of Va., Alexandria Division). The thrust of this decision is the necessity for the judgment debtor to request that her/his bank set up a **specialty designated bank account** for exempt funds, for example Social Security benefits. However, Judge Stephen S. Mitchell, United States Bankruptcy Judge, also covers many other pertinent areas of Virginia's garnishment procedures.

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BANK ACCOUNT AND WAGE GARNISHMENTS - GENERALLY

A Summons in Garnishment (DC-451) is issued by the court on the request of a creditor (**judgment creditor**) who holds a **judgment** against you, the **judgment debtor**. The Summons orders the **garnishee** to seize funds such as a **bank account, wages** or other property owned by you to be taken to pay the judgment. The garnishee is summoned to locate and send the garnished funds to the court on or before the **Hearing Date** located on the summons. You are usually advised of the pending garnishment action after the garnishee is served by the sheriff.


This vignette specifically addresses bank account and wage garnishments in Virginia’s General District Court. It does not cover those situations where the debt is for **child or spousal support** and maintenance or, is for the purchase price of property or any part thereof. Review Virginia Code **§ 34-5**. for those debts where exemptions do not apply. For the Virginia Judicial System forms regarding garnishment see <http://www.courts.state.va.us/forms/district/civil.html>

What Remedy Does the Debtor Have?

Before the hearing you, or your lawyer, should review the exemptions on the **Notice To Judgment Debtor- How To Claim Exemptions From Garnishment** [Form DC-454]. There are also **Instructions** for DC-454.

Most of the exemptions apply only to a garnishment of a bank account.

When is the last day you can file the exemption claim?
 Before the Hearing Date (Not on the Hearing Date).

 **Stop!** First fill out the **Garnishment Checklist**. It is in Adobe Acrobat pdf and is fill-in-able. Please note, there is no exemption solely because you are having difficulty paying your debts or you need the money that is being garnished.

Bank Account Garnishments

The creditor files a garnishment action against a bank (garnishee) where you have one or more accounts, to “freeze” any account(s) you have with bank. You are usually not notified of the garnishment action until after the account(s) is frozen. After freezing, no payments are made by the bank from the account(s) (any checks you have written are not honored) and any monies that flow into the account(s) become part of the frozen funds.

Look Carefully at All of the Possible Exemptions

If any of the money in the account(s) meets the standard of any of the exemptions 1. – 10. or 12. – 21., then you note this on the, Request for Hearing Garnishment Exemption Claim [click on Notice To Judgment Debtor- [HOW TO CLAIM EXEMPTIONS](#) From Garnishment [Form DC-454]], and be prepared to prove this at the exemption hearing.

But what if the money in the account does not meet the standard for exemptions 1. – 10. OR 12. – 21.? Look to exemption number 11. – [Homestead deed](#).

What About Child Support Payments?

On July 1, 2007, §§ [8.01-512.4](#) and [20-108.1](#) of the Code of Virginia, relating to exempting child support payments from garnishment, were amend and reenacted. Pursuant to these amendments, number 21. was added to the "Major Exemptions Under Federal and Virginia State Law" [see [Notice To Judgment Debtor- How To Claim Exemptions From Garnishment](#) [Form DC-454]] *Child support payments* (§ [20-108.1](#), Code of Virginia). A new number 22. Other (describe exemption): \$ was also added.

What About Commingled Social Security Benefits?

Social security benefits are protected even if they are commingled in a savings or checking account with funds from other sources. See *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 416-17, 34 L. Ed. 2d 608, 93 S. Ct. 590 (1973). If the recipient of social security benefits commingles the benefits with other funds, he is entitled to protection as to those funds that are **reasonably traceable** to social security income. See *Philpott*, 409 U.S. at 416-17.

NCNB Financial Services, Inc., V. Joseph B. Shumate, Jr., 829 F. Supp. 178, Western District Of Virginia, Roanoke Division (1993)

What About Garnishment of Non-Government Disability Benefits?

Non-government long-term and short-term disability benefits can be exempted from garnishment. See the [Notice To Judgment Debtor- How To Claim Exemptions From Garnishment](#) [Form DC-454] at number 16. Proceeds from industrial sick benefits insurance (§ [38.2-3549](#) Benefits not subject to legal process., Code of Virginia). See also, § [38.2-3406](#) Accident and sickness benefits not subject to legal process. Code of Virginia.

Vignettes

**Garnishment – Bank Account — How a Judgment Debtor Sets Up a [Specially Designated Bank Account](#) for exempt funds
and**

Garnishment of a Bank Account Containing Exempt Funds and Bank Fees
Arguments that a depositor can make if a bank assesses a garnishment fee on the bank account when the account contains only exempt funds.

See also, *Model Letter* for a Specially Designated Bank Account.

Wage Garnishment

To exempt wages from garnishment you must go to Exemption 11. **Request for Hearing Garnishment Exemption Claim** [click on **Notice To Judgment Debtor- How To Claim Exemptions From Garnishment** [Form DC-454]].

First obtain the total amount that would be taken **out of the debtor's wages** for garnishment as of the **Hearing Date**. This is the amount that will be exempted in the Homestead Deed. You usually get this information from the payroll department where you work.

HOMESTEAD EXEMPTION

Where the funds in the bank account do not meet the criteria for any of the exemptions, or the garnishment is of wages, then look at exemption number 11.

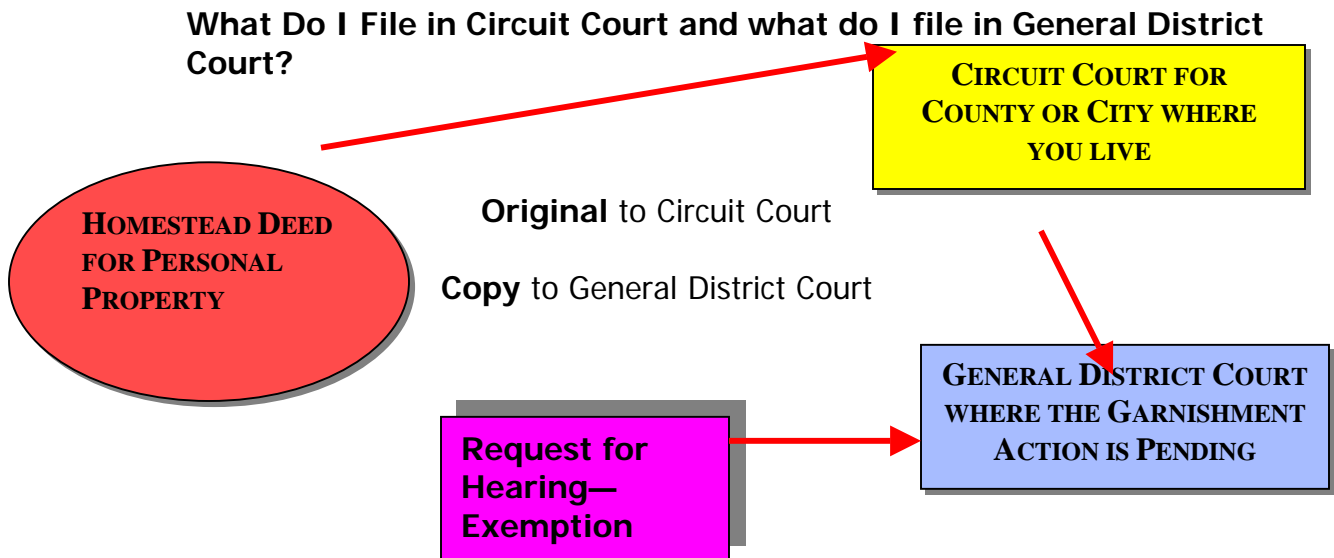
"Homestead exemption of \$5,000," but see below.

All Virginia **residents** are entitled to a **lifetime** homestead exemption (it has nothing to do with owing a home) of \$5,000.00. Additional amounts may be claimed exempt if the householder supports dependents or is a disabled veteran. See sections **§ 34-4** and **§ 34-4.1**

This is done by filing a homestead deed in the **Circuit Court** for the county/city where you **reside**.

1. Fill out the **Homestead Deed for Personal Property**, get your signature notarized, and file it in the Circuit Court. This is done even if the judgment was taken in General District Court. There is a filing fee for filing the Homestead Deed.
2. Fill out the **Request for Hearing Garnishment Exemption Claim** [click on **Notice To Judgment Debtor- How To Claim Exemptions From Garnishment** [Form DC-454]], and take a copy of the filed Homestead Deed and file it with the Clerk's office for the General District Court where the garnishment action is pending. The Clerk will set a hearing date for the exemption claim. You have a right to a hearing within **seven business days** from the date you file your claim with the court. See Virginia Code **§ 8.01-512.4**

3. Mail a copy of the Exemption Claim and the Homestead Deed to the creditor or its/his/her attorney.
4. On the date of the hearing, come to court ready to explain why the funds are exempt, and bring any documents that may help prove your case.



A creditor can only garnish money that is owed to the judgment debtor.

there is in the hands of some person in his capacity as personal representative of some decedent a sum of money to which a judgment debtor is or may be entitled as creditor or distributee of such decedent

§ 8.01-511

Forms

Suggestion for Summons in Garnishment [Form DC-450]
Garnishment Summons [Form DC-451]
Notice To Judgment Debtor- How To Claim Exemptions From Garnishment [Form DC-454]
Instructions for DC-454
Garnishee Information Sheet [Form DC-455]
Garnishee's Answer [Form DC-456]
Instructions for DC-456
Homestead Deed for Personal Property (GDC) (LSNV) (pdf)
Homestead Deed for Personal Property (English/Spanish) (GDC) (LSNV) (pdf)
Order For Dismissal Of Garnishment (GDC) (LSNV) (pdf)

Model Letter for a Specially Designated Bank Account

SOME VIRGINIA CODE SECTIONS FOR GARNISHMENT:

§ 23-38.81.	Prepaid tuition contracts and savings trust agreements; terms; termination etc.
§ 34-27.	Additional articles exempted to householder engaged in agriculture other information regarding the Homestead exemption.
§ 34-29.	Maximum portion of disposable earnings subject to garnishment.
§ 34-1.	Definitions.
§ 34-4.	Exemption created.
§ 34-14.	How set apart in personal estate; form to claim exemption of personal property.
§ 34-22.	Waiver of exemption; its effect; form of waiver.
§ 34-34.	Certain retirement benefits exempt. Amended 7/1/07
§ 38.2-3406	Accident and sickness benefits not subject to legal process.
§ 38.2-3549	Benefits not subject to legal process.
§ 8.01-512.4	Notice of exemptions from garnishment Amended 7/1/07
§ 20-108.1	Determination of child or spousal support Amended 7/1/07

Poor Debtor Exemption

§ 34-26 Poor debtor's exemption; exempt articles enumerated. This exemption is in addition to, and independent of, the homestead exemption.

HOW DO I DETERMINE HOW MUCH MY EMPLOYER SHOULD GARNISH FROM WAGES?

First Step –

Determine what are the "disposable earnings" by calculating the gross earnings, then deducting from gross earnings those amounts required by law to be withheld, such as federal and state taxes and social security withholdings. In calculating disposable earnings, do not deduct other payroll deductions such as insurance premiums, savings plans or retirement contributions.

Second Step –

Determine the maximum amount that may be withheld from "disposable earnings." A description of this calculation is provided on the back of the attached Garnishment Summons. The following is a way to implement this part of the procedure:

On the front of the Garnishment Summons under "Maximum Amount of Disposable Earnings Subject to Garnishment," see which boxes have been checked to calculate the maximum amount subject to garnishment.

If Support is checked, then multiply "disposable earnings" by the percentage checked underneath "Support"-if no box is checked, then use 50%.

If "State Taxes" is checked, then multiply "disposable earnings" by 100%.

If none of the boxes are checked, use the table on the last page and, where a percentage is given, multiply "disposable earnings" by the applicable percentage.

Third Step –

Determine if other deductions for child support or other garnishments apply to the judgment debtor.

Virginia law requires that payments for support ordered by a court or by the Division of Child Support Enforcement must be deducted from the maximum amount subject to garnishment as calculated above in the second step to determine the amount left for garnishments. (There may be no wages left.)

Summary To obtain the exact amount that is garnished, consult with legal counsel. For a general idea of how to determine the amount garnished from wages:

If your disposable wages are less than \$206, no money can be garnished.

If your disposable wages are between \$206 and about \$275, only part of the 25% garnishment calculated amount can be taken from the wages.

If your disposable wages are over about \$275, the full 25% can be garnished from the wages.

Virginia Code § [34-29](#)

Presumption: 25% garnishment rate

1. Determine the 'disposable earnings' of the debtor (weekly calculation is easiest)

(Gross income minus federal and state taxes and social security (maybe Medicare?))

2. Calculate 25% of the 'disposable earnings' - this is the maximum amount garnishable.

3. Beginning **July 24, 2007**, **\$234.00** of each week's "disposable net earnings" cannot be garnished. If a week's "disposable net earnings" is over **\$234.00** and up to **\$312.00**, each dollar over **\$234.00** is withheld for the garnishment. If a week's

"disposable net earnings" is over **\$312.00**, then the amount of that week's "disposable net earnings" garnished is a straight **25%**.

Beginning **July 24, 2008**, **\$262.00** of each week's "disposable net earnings" cannot be garnished. If a week's "disposable net earnings" is between **\$262.00** and **\$349.33**, each dollar over **\$262.00** is withheld for the garnishment. If a week's "disposable net earnings" is over **\$349.33**, then the amount of that week's "disposable net earnings" garnished is a straight **25%**.

Beginning **July 24, 2009**, **\$290.00** of each week's "disposable net earnings" cannot be garnished. If a week's "disposable net earnings" is between **\$290.00** and **\$386.66**, each dollar over **\$290.00** is withheld for the garnishment. If a week's "disposable net earnings" is over **\$386.66**, then the amount of that week's "disposable net earnings" garnished is a straight **25%**.