

Georgia Garnishment Protecting Your Money

Unlock Your Money



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What is Garnishment?

Garnishment is a legal procedure that allows a creditor to enforce a monetary judgment against someone who owes them on an unpaid debt.

Garnishment forces repayment by allowing the creditor to reach the debtor's property when it is in the hands of a third party, such as a banking institution, employer, etc. Through garnishment, a creditor can be repaid the debt in one of two ways:

- By the debtor's employer withholding a certain percentage of the debtor's paycheck for the creditor until the debt is paid in full, or
- The creditor taking the money owed directly from the debtor's bank account.

It is important to understand that a garnishment is not an automatic process when you owe someone money. A garnishment can only happen after a creditor has filed a lawsuit seeking a monetary judgment and the court has ruled in their favor. Once the court rules in their favor a judgment order will be issued demanding payment. When that judgment order is not paid then the creditor can forcibly collect by means of a garnishment. There are a few situations where a court order is not necessary for a garnishment, they include:

- The government seeking payment for unpaid income taxes
- Federal Student loans in default
- Court-ordered child support and arrears
- Unpaid court costs

A creditor must wait fifteen days after obtaining the judgment order before requesting a writ of garnishment, but they can file garnishment proceedings against a debtor immediately if they win via a default judgment. Garnishments in Georgia are governed by the Georgia Code and applicable federal law.

How Much of My Wages Can a Creditor Garnish?

Federal law puts a cap on how much a creditor can garnish from a debtor during a garnishment. The limits on what percentage of wages a creditor can garnish in Georgia can be found in the Federal Consumer Credit Protection Act since the state of Georgia follows the federal rules. Known as the "25-30 rule," a creditor is limited to garnishing the lesser of:

- No more than 25% of the debtor's "disposable wages" (wages after mandatory deductions) can be garnished. This part of the rule makes sure that 75% of a debtor's wages are available for living expenses, or

- The amount by which the debtor's wages equal at least 30 times the federal minimum wage. Once that threshold is met, a creditor can fully garnish any wages earned in excess. If a debtor's disposable wages are less than 30 times the federal minimum wage, then the wages cannot be garnished at all.

Certain types of money or benefits are exempt from garnishment. Garnishment exemptions are available under both state and federal law. Some of the most common garnishment exemptions include:

- Social Security Insurance (SSI)
- Social Security disability and retirement benefits
- State welfare payments
- Unemployment benefits
- Veterans Association (VA) benefits
- Student loans
- Child support payments

These are not all of the federal and Georgia state garnishment exemptions. If you have questions regarding what money or benefits might be exempt from garnishment in your specific situation, then it is important to speak to an experienced attorney who can help guide you.

How Does Someone Collect Payment Through Garnishment?

Once a creditor has a judgment in hand, and has waited the appropriate amount of time, the creditor can file a garnishment action in court. The garnishment action must be filed in the appropriate court where the debtor or the debtor's registered agent is located. The dollar amount of the judgment also determines which court has jurisdiction over the garnishment action. There are four different types of garnishment actions in the state of Georgia, they are:

1. Affidavit of Continuing Garnishment for Wages: These are garnishments that are filed against a person's employer. Continuing garnishments can be in place for a period of up to three years after a recent change in Georgia law increasing the previous 6-month period.
2. Affidavit of Garnishment (General/Bank): These are garnishments are single actions where the creditor seeks all money, property, and effects of a debtor on the day of service of the garnishment action and for the 29 days following service. These garnishments are typically served on banks, employers, and businesses that owe money to the debtor. If the debtor gets paid by commission, then this type of garnishment will capture 100% of a debtor's commissions for an entire month.
3. Affidavit of Continuing Garnishment for Support: These are garnishments that mainly deal with alimony and child support. Continuing Garnishment

for Support actions take 50% of a debtor's take-home pay and do not expire until a zero balance has been reached. A debtor is considered current on payments when a zero balance has been reached under this type of garnishment.

4. Tax Revenue Garnishments: These are garnishments that are filed by the Georgia government to recover unpaid state income taxes.

Once a creditor is granted one of the above garnishment actions by a court, the creditor can then seek to enforce a prior money judgment through the various means allowed by garnishment.

Required Notice Before Garnishment Starts

Pursuant to O.C.G.A. § 18-4-8(b)(1)(A) (2016) Within three business days of serving the garnishment summon on the garnishee, the Plaintiff **MUST** serve a copy of the Affidavit of Garnishment, Summons of Garnishment and the Notice to Defendant of Right Against Garnishment of Money, Including Wages, and Other Property on the Defendant.

The Notice **MUST** be sent:

- To the defendant at the defendant's last known address by:
- Regular mail; **AND**
- (II) Registered or certified mail or statutory overnight delivery, return receipt requested.
- (ii) The return receipt indicating receipt by the defendant, the envelope bearing the official notification from the United States Postal Service of the defendant's refusal

The defendant's refusal to accept or failure to claim the registered or certified mail or overnight delivery addressed to the defendant is still deemed sufficient notice.

What is a Traverse of Garnishment?

A traverse is a legal answer filed by a debtor that is meant to challenge a creditor's affidavit of garnishment as being untrue or legally insufficient. A debtor can also file a traverse of garnishment stating that the money or benefits subject to the garnishment are exempt under either state or federal law as listed earlier in this article. A court must hear the debtor's traverse within ten days after the traverse is filed. The debtor has the burden of proof and must show the court how the creditor's affidavit is untrue or legally insufficient. This can be done by showing that the judgment the garnishment relies on is void or invalid. The court will then take all the available information and make a determination on whether or not the garnishment action should stand. If the debtor is able to prove a deficiency in the

creditor's affidavit during the hearing on the debtor's traverse, then the garnishment action will be dismissed. If the debtor is not able to prove a deficiency in the creditor's garnishment affidavit, then the garnishment action will continue. If you are facing a garnishment action and would like to file a traverse to dispute the validity of the garnishment, it is important that you speak to an attorney to understand what exemptions and defenses might apply to you and your garnishment case.

How a Bankruptcy Filing Can Stop Garnishment Actions

If your goal is to stop a garnishment action, then a bankruptcy filing can accomplish that goal. A garnishment can be stopped by filing either a Chapter 7 or Chapter 13 bankruptcy. Filing a Chapter 7 bankruptcy can delay garnishment until the bankruptcy case is finished through an automatic stay. If a dischargeable debt the garnishment lien will be wiped out altogether. Filing a Chapter 13 bankruptcy will also stop a garnishment altogether (including domestic support garnishments) and allow you the opportunity to fulfill your financial obligations. In a Chapter 13 bankruptcy, you will have a court-approved repayment plan in place, which will enable you to catch up on your payments, so you don't lose your assets. A Chapter 13 bankruptcy case takes anywhere from 3-5 years, and any garnishment actions will be suspended during this entire time as long as you make timely payments according to your repayment plan.

Can I Recover Wages Garnished Before/After Filing Bankruptcy?

Yes, you can recover wages garnished before filing bankruptcy if you have had \$600 or more garnished from your wages in the 90-day period before filing for bankruptcy. You will have to list any applicable state or federal exemptions in order to be eligible to recover wages garnished before you filed for bankruptcy. If a creditor is still garnishing your wages after you have filed for bankruptcy, then that creditor can be sanctioned by the court for violating the automatic stay, which automatically goes into effect once a bankruptcy case is filed. The court will typically only punish willful violators of automatic stays. If a creditor garnishes your wages by mistake after you file for bankruptcy, then they will likely avoid court sanctions as long as they correct the error and restore the debtor. If you are facing an aggressive creditor who is threatening garnishment, it is critical to seek the advice of an experienced attorney who can help you make the best decisions for your financial future.

How Ballard Law Group Can Help You Deal Garnishment Actions

The attorneys from The Ballard Law Group have helped countless Georgians facing foreclosure sales or garnishment actions. We offer a free debt analysis along with a free consultation to help you best understand your financial situation and make the

best decisions going forward. If a bankruptcy filing is your best option in dealing with a foreclosure or garnishment, then the attorneys at Ballard Law Group can help you determine which bankruptcy filing is the most beneficial for you and your financial situation. We offer low and affordable payment plans along with personal attention and a confidential setting so you can feel comfortable discussing your personal finances. We are proud to offer two convenient locations to meet with our attorneys for consultations: Atlanta and Lawrenceville, GA. To arrange a free consultation and debt analysis with one of our attorneys, call us at (404) 220-9906 or contact us [online](#). Take your first step towards financial freedom with a call to The Ballard Law Group today.

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