

## COLLECTION OF A CIVIL JUDGMENT (FOR CASES FILED JULY 1, 2023 OR LATER)

This pamphlet is general in nature and is not designed to give legal advice. The Court does not guarantee the legal sufficiency of this pamphlet for your specific needs. Also, as the law is constantly changing, the information in this pamphlet may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

### WHAT IS A JUDGMENT?

At the conclusion of a Trial, the Judge or Jury will make a written decision called a *Judgment* about who wins or loses and the amount of any money, attorney's fees, and/or court costs that will be awarded. The *Judgment* usually does not state how or when the money will be paid.

The party to whom the money is owed is called the **Judgment Creditor** ("Creditor"). The party owing the money is the **Judgment Debtor** ("Debtor"). *Judgments* are typically reported by credit reporting agencies and may affect a **Debtor's** credit rating.

*It is the Creditor's responsibility to collect the Judgment.*

The **Creditor** may begin the collection process immediately after the *Judgment* is filed. There are three (3) basic ways to collect a *Judgment* in Magistrate Court:

- **Agreement between the parties** (working out a mutually agreeable payment schedule or satisfaction);
- **Execution on a Judgment** (seeking a *Writ of Execution* for property in the Civil Division of Magistrate Court); and/or
- **Garnishment** (seeking a *Writ of Garnishment* (for wages, accounts, etc.) in the Civil Division of Magistrate Court).

### WHAT IS AN EXECUTION OF A JUDGMENT?

Execution of a *Judgment* is the legal process of enforcing a *Judgment* by seizing and selling the **Debtor's** property. A Magistrate Court *Judgment* cannot be executed against land or homes. A *Writ of Execution* permits the Sheriff to take and sell the **Debtor's** property. The proceeds from the sale are used to pay for the cost of the sale and are then paid to the **Creditor** and applied toward the amount owed by the **Debtor** under the *Judgment*.

To obtain a *Writ of Execution*, the **Creditor** first must serve the **Debtor** with a *Notice of Right to Claim Exemptions from Execution*, to which the **Debtor** has ten (10) days to respond.

A *Notice of Right to Claim Exemptions from Execution* tells the **Debtor** that it may claim certain types of property exempt from execution. If the **Debtor** files a *Claim of Exemption*, the Sheriff may not be able to take the **Debtor's** property, which is exempt. However, the **Debtor** must identify the exempt property; otherwise, the Sheriff may take possession and sell any and all personal property owned by the **Debtor**.

The following are examples of some of the types of property that are exempt from execution and, therefore, cannot be taken by the Sheriff to satisfy a *Judgment*:

- Tools, equipment, implements, professional books, instruments, inventory, supplies and materials reasonably necessary for use in the person's trade, profession, business or occupation, or of their spouse, not exceeding \$15,000 in the aggregate;
- A person's aggregate interest in motor vehicles, not exceeding \$10,000 in value
- A person's aggregate interest in household goods and furnishings, not exceeding \$75,000 in value primarily used by or for the support and maintenance of the household of the person or the person's spouse, family, and dependents, including:

- Furniture;
- Appliances such as a refrigerator, stove, oven, freezer, clothes washer, clothes dryer, dishwasher, microwave, coffee maker, toaster, and vacuum cleaner;
- Clothing and personal effects;
- Electronic equipment such as televisions, radios, cellular telephones, computers, computer equipment, digital or compact disc players, and other electronic consumer devices;
- medical equipment, supplies, and professionally prescribed health aids reasonably necessary for the care and support of the person or their dependents;
- Musical instruments, not exceeding \$4,000 in the aggregate;
- Toys, games, sports, hobby and craft equipment, materials and supplies, not exceeding \$2,500 in aggregate value;
- Books; and
- Two (2) firearms.
- A person's interest in a wedding band and an engagement ring plus additional jewelry including:
  - A person's interest in additional jewelry held primarily for that person's use;
  - A person's spouse or dependent's interest in the aggregate of additional jewelry not exceeding \$5,000 in value;
- Works of art or artwork of a person or their relatives, not exceeding \$2,500 in aggregate value;
- Funds or proceeds from a pension, individual retirement account, annuity, profit-sharing plan, and any other retirement account;
- Stimulus payments held by or payable to the person or their dependents;
- Refundable federal and state tax credits;
- An educational savings account that would qualify for federal tax exemptions;
- A health savings account that would qualify for federal tax exemptions;
- A person's aggregate interest, not exceeding \$15,000, in any personal property, tangible or intangible not otherwise exempt, including deposits in financial or investments accounts or personal property that exceeds the monetary limits listed in this pamphlet;
- An additional \$15,000 of any type of property in lieu of the homestead exemption (which does not apply to Magistrate Court *Judgments*) may be declared exempt

Beginning July 1, 2025, exemption amounts will be adjusted every two (2) years to reflect a cost-of-living adjustment reflected by the change in the consumer price index for all urban consumers.

Ten (10) days after the **Creditor** serves the **Debtor** with a *Notice of Right to Claim Exemptions from Execution*, the **Creditor** must file a sworn *Application for Writ of Execution* with the Court before the Judge or Court Clerk may issue the *Writ of Execution*. After the Judge or Court Clerk has issued the *Writ of Execution*, the **Creditor** must give the *Writ of Execution* to the Sheriff who will go to the **Debtor's** residence within sixty (60) days of the issuance of the *Writ of Execution*, take the **Debtor's** property, and sell the property at a public sale. If the **Debtor** does not file a *Claim of Exemptions* within ten (10) days after being served the *Notice of Right to Claim Exemptions*, the **Debtor** shall be deemed to have waived the right to claim an exemption, and the Sheriff may sell any of the **Debtor's** property.

If the **Debtor** files a *Claim of Exemptions* and the **Creditor** disputes that the property is exempt, the **Creditor** may file a *Notice of Dispute and Request for Hearing*. Then, the Judge will hold a hearing within ten (10) days and decide if the property is exempt. However, if the **Creditor** does not file a *Notice of Dispute and Request for Hearing* on the **Debtor's** claimed exemptions, the Sheriff will take and sell only the **Debtor's** non-exempt property. The proceeds of the Sheriff's sale will be used to pay the costs of the sale and the **Creditor**.

### WHAT IS A GARNISHMENT?

The **Creditor** is required to first pursue a *Writ of Execution* or determine whether the **Debtor** possesses property subject to execution, before pursuing a Garnishment.

Garnishment is a legal process where money or property of the **Debtor** which is owed to the **Creditor**, and is held by a third party such as the **Debtor's** employer or bank ("**Garnishee**"), may be taken to pay a *Judgment*. Wages or bank accounts are the most common types of property garnished. A *Writ of Garnishment* directs the **Garnishee** to hold the **Debtor's** money or property until the Court may determine to whom it should be paid. To garnish a **Debtor's** property, a **Creditor** must file an *Application for Writ of Garnishment* with the Court. The **Creditor** must provide the name and address of the **Garnishee** on the *Application for Writ of Garnishment*.

When an *Application for Writ of Garnishment* is filed with the Court, the Judge or Court Clerk may issue a *Writ of Garnishment*. The **Creditor** must serve the *Application for Writ of Garnishment*, *Writ of Garnishment*, and *Answer to Writ of Garnishment* on the **Garnishee** within thirty (30) days of the Court's issuance of a *Writ of Garnishment*. At the same time as the *Writ of Garnishment* is served on the **Garnishee**, a copy of the *Writ of Garnishment* must be sent to the **Debtor's** last known address. If the **Debtor** is an individual and the garnishment is for other than wages (i.e., the **Garnishee** is a bank, savings and loan, or credit union, or other financial institution), then the **Creditor** also must serve a *Notice of Right to Claim Exemptions* and a *Claim of Exemption* form on the **Garnishee**. The **Garnishee** is then required to mail or otherwise deliver copies of those documents to the **Debtor** within four (4) business days after the **Garnishee** was served with these documents. When an *Application for Writ of Garnishment* is filed, the Court Clerk will prepare a service packet, which contains all of these required documents.

The Garnishment service packet must be served on the **Garnishee** in the same manner as the service of a *Summons* when a *Civil Complaint* is served.

If a **Garnishee** has any of the **Debtor's** money or property, then the **Garnishee** must hold the money or property until the Court orders its distribution. If the *Writ of Garnishment* is served on a financial institution and the **Debtor** is an individual or sole proprietor, they have an exemption of \$2,400 in depository and investment accounts, and the *Writ of Garnishment* attaches only to money in excess of \$2,400. After the *Writ of Garnishment* is served, the **Garnishee** must file a written *Answer* with the Court within twenty (20) days. If the **Garnishee** does not file an *Answer* to the *Writ* within twenty (20) days, the **Creditor** may file a *Motion for Default Judgment against the Garnishee*. If the **Garnishee** defaults, the **Garnishee** may be responsible for the full amount of the *Judgment*. If the **Garnishee** files an *Answer* that, for example, it is holding money or wages of the **Debtor**, then the Court may enter a *Judgment on Writ of Garnishment and Order to Pay*, which orders the **Garnishee** to pay a portion of **Debtor's** money or wages to the **Creditor**.

**Note: The Garnishee may collect from the Debtor any attorney's fees and costs that is has incurred in Answering the Garnishment.**

If the debt is not for child support payments, the **Garnishee** can pay the **Creditor** the greater amount of twenty-five percent (25%) of the **Debtor's** disposable earnings for any pay period or the **Debtor's** disposable earnings less forty (40) times the highest-applicable minimum hourly wage rate (the highest federal, state or local minimum hourly wage rate) at the place the wages were earned.

Amounts the **Debtor's** disposable earnings exempt from garnishment retain their exempt status when deposited into a personal bank account, if they are reasonably traceable back to their source.

*A Garnishment of wages continues until the Judgment debt is paid in full or until the Debtor is no longer employed by the Garnishee.*

If the **Garnishee** owes money or property to the **Debtor**, other than wages, the Court may enter a *Judgment on Writ of Garnishment and Order to Pay* directing the **Garnishee** to pay all of the funds or property to the **Creditor** up to the amount of the *Judgment*.

Within ten (10) days after the *Writ of Garnishment* is served on the **Debtor** for garnishment other than wages, the **Debtor** may file a *Claim of Exemptions*. A *Claim of Exemptions* lists the types of money that cannot be garnished. Some common exemptions from garnishment are the person's right to receive:

- Social Security benefits (OASDI or SSI);
- Public Assistance Benefits such as Medicaid, Medicare, food stamps, or other aid from a government public assistance program (i.e., TANF, TBP, AFDC, GA, welfare);
- Veteran’s benefits;
- Disability, illness, workers’ compensation or unemployment benefits;
- An interest in or proceeds from a pension, individual retirement account, annuity, profit-sharing plan, and any other retirement account;
- Alimony, family or domestic support (i.e., child support), or separate maintenance to the extent reasonably necessary for the support of the person or their dependents; and
- Payments from a stock bonus, pension, profit-sharing, individual retirement account, annuity, or similar plan or contract because of illness, disability, death, or length of service, to the extent reasonably necessary for the support of the person or their dependents.

If the **Debtor** files a *Claim of Exemption* for garnishment of other than wages, the money will be exempt unless the **Creditor** objects by filing a *Notice of Dispute and Request for Hearing* with the Court. If the **Creditor** files a *Notice of Dispute* within ten (10) days after being served with a *Claim of Exemption*, the Court will hold a hearing within ten (10) days to decide the issue.

If the **Debtor** fails to file a *Claim of Exemption* within ten (10) days after service of the *Notice of Right to Claim Exemptions*, the **Debtor** shall be deemed to have waived the right to claim a statutory exemption other than wages.

If the **Garnishee** does not file an *Answer* and the **Debtor** does not file a *Claim of Exemption (Garnishment)* form, a *Default Judgment* may be entered twenty-five (25) days after service of the *Writ of Garnishment* on the **Garnishee**, directing the **Garnishee** to pay the **Creditor**.

### STAYING THE COLLECTION PROCESS

The collection process may be stayed or stopped if the **Debtor** files for Bankruptcy. The **Debtor** may appeal and obtain a stay of the proceedings to enforce the *Judgment* by posting a *supersedeas bond* with the Clerk of the Magistrate Court.

### INFORMATION ABOUT THE DEBTOR

If the **Creditor** wants to learn information about the **Debtor’s** assets, employment, or property to assist in collecting the *Judgment*, the **Creditor** may request a *Supplementary Proceeding*, which is a hearing before the Judge, after the filing of a *Judgment* for the payment of money. A **Creditor** also may subpoena any person with knowledge that will aid in the enforcement of or on the *Judgment* to appear before the Court, depose, serve interrogatories, or subpoena documents in an attempt to gather this information. A *Subpoena* must be served on the person having or holding the information requested.

### WHEN THE JUDGMENT IS PAID

When the **Debtor** partially or fully pays the *Judgment*, the **Creditor** should file a *Partial* or *Full Satisfaction of Judgment* with the Court. When a *Full Satisfaction of Judgment* is filed, the case is closed. If the *Judgment* has been fully paid and the **Creditor** does not file a *Satisfaction of Judgment*, the **Debtor** may file a *Motion for Satisfaction of Judgment* with the Magistrate Court. After the *Motion* is served on the **Creditor** in the manner of a *Summons*, the Court will then schedule a hearing to determine if the **Creditor** has been paid the full amount of the *Judgment* with interest plus post-judgment costs incurred.

**Other Pamphlets and Forms are available at the Magistrate Court or New Mexico’s Judiciary’s website ([www.nmcourts.gov](http://www.nmcourts.gov)).**