

**PROCESS CHECK LIST FOR THE JUDGMENT CREDITOR
GARNISHMENT (NON-EARNINGS)**

WARNING !

ALL PARTIES TO A GARNISHMENT ARE STRONGLY URGED TO OBTAIN LEGAL ADVICE FROM AN ATTORNEY. Garnishment procedures are governed by Arizona law and are extremely complicated. All parties involved must follow these laws and procedures correctly. The Court may issue an order for monetary penalties against any party who does not proceed properly, including the judgment creditor.

INTRODUCTION

This packet is for a judgment creditor who wishes to pursue a garnishment of “non-earnings.” A non-earnings garnishment targets personal property belonging to a judgment debtor but held by a third party, or money other than wages that is owed to the debtor by a third party. Some examples of non-earnings include money in a bank account, the contents of a safe deposit box, a rent payment owed but not yet paid, or an account receivable.

Property that is not earnings may be subject to garnishment, however, not all property is subject to garnishment, and certain non-earnings property is protected (see A.R.S. Title 33, Chapter 8). For example, Arizona law provides that a judgment creditor who garnishes a bank account may only take the money that is in the account on the day the Writ of Garnishment is served on the bank. If additional funds are later deposited in the account, a new garnishment must be filed to collect them. In addition, the first \$150 per person per bank account is protected from garnishment. If persons other than the judgment debtor(s) is/are on the account, a hearing may be held to determine each person’s share in the account (A.R.S. §12-1595).

STEP 1: Review the forms and instructions in the packet

To garnish a bank account or other form of property other than wages, you will be working with the following forms in the packet: FORMS 1 through 16.

STEP 2: Apply to the Court for a Writ of Garnishment and serve the required forms on the garnishee

To begin your garnishment action, complete and file an Application for Writ of Garnishment (FORM 1). There is a fee for filing this form. If you cannot pay the fee, it may be deferred if you qualify. The clerk has a form you can complete to request deferral.

Fill out and file with the Court the Application for Writ of Garnishment (Non-Earnings) (FORM 1), and the Writ of Garnishment and Summons (Non-Earnings) FORM 2). If you are filing your application in a Superior Court, the Clerk of the Court will sign the writ and summons. After FORM 2 is signed and been returned to you, you must serve the documents listed below on the garnishee. The number of copies to be served is indicated for each form. Do not fill in any unnumbered blanks. **Only fill out the caption and if included on the form, fill out the petitioner, respondent, and garnishee’s name, address & phone number** on forms 4, 7, 8 & 9 before serving them on the garnishee.

FORM 2 Writ of Garnishment and Summons (Non-Earnings) – 2 copies
FORM 3 Instructions to Garnishee (Non-Earnings) – 1 copy
FORM 4 Garnishee’s Answer (Non-Earnings) – 4 copies
FORM 7 Notice to Judgment Debtor of Garnishment (Non-Earnings) – 2 copies
FORM 8 Request for Hearing – 2 copies
FORM 9 Notice of Hearing on Garnishment (Non-Earnings) – 2 copies
The judgment awarding you money against the judgment debtor – 1 copy

You will pay a fee for service of these documents. A private process server, a constable from the Court or a deputy sheriff can serve them for you. You may be able to recover the amount of money you pay to serve these forms at the end of the proceeding. If you cannot afford to pay the service fee, you may qualify for deferral of the payment. Private process servers do not accept deferrals. The clerk has a form you can complete to request deferral of service fees.

For specific information on how to serve these documents on a financial institution, refer to A.R.S. §12-1577. Arizona statutes may be read online at: <http://www.azleg.state.az.us/ars/12/01577.htm>, and at your local law library.

STEP 3: Wait for garnishee Answer

By law, the garnishee is to complete and file a Garnishee’s Answer with the Court within 10 business days, beginning with the first business day after service on the garnishee. Do not take any further steps in this process until this time period has been completed or until you receive a copy of the Garnishee’s Answer, if that occurs sooner. If the time period has expired and you still have not received a copy of the Answer from the garnishee, contact the Court to see if an Answer has been filed.

STEP 4A (IF APPLICABLE): If the garnishee does not file an Answer

Complete and file a Petition and Order to Show cause Regarding Garnishee’s Default and Order to Show Cause (FORMS 10 AND 11). This is a request to the Court to order the garnishee to appear and answer. The Court may then order the garnishee to appear for a hearing and explain why no Answer was filed. If a hearing date is set, you must serve the Petition and the signed Order to Show Cause on the garnishee using one of the service methods listed in STEP 2 (service by process server, constable or deputy sheriff). You must also deliver a copy of the Petition and signed Order to Show Cause to the judgment debtor by mail or hand delivery. At the hearing, the Judge may order the garnishee to pay the judgment creditor up to the total amount owed by the judgment debtor.

STEP 4B [IF APPLICABLE]: If the garnishee claims to hold no property of the judgment debtor

The garnishee who holds no property of the judgment debtor can ask the Court to make the judgment creditor pay for the garnishee’s reasonable expenses related to responding to a Writ of Garnishment. For this reason, before beginning a garnishment, the judgment creditor should take precautions to ensure the person or organization named as the garnishee does in fact possess property of the judgment debtor.

STEP 4C [IF APPLICABLE]: If the garnishee claims to hold property of the judgment debtor

Wait 10 more business days to see whether the debtor files a Request for Hearing on Garnishment (FORM 8). If the judgment debtor does not request a hearing within 10 business days of the filing of the Garnishee's Answer, complete and file an Application for Garnishment Judgment (Non-Earnings) (FORM 5). Also file a Garnishment Judgment (Non-Earnings) (FORM 6) for the Judge to sign.

Mail or personally deliver copies of these forms to the garnishee and to the judgment debtor before you file them with the Court. Once the Judge signs the Garnishment Judgment (Non-Earning) (FORM 6), the Court will send a copy of the signed version of this form to all parties.

If the garnishee does not receive a copy of the signed Garnishment Judgment within 90 days of filing an Answer, you will have to begin again from the beginning, except under limited circumstances, *see* A.R.S. §12-1587. *The writ expires 90 days after the Answer is filed with the Court in a non-earnings garnishment.* Check with the Court periodically if you do not receive a signed Garnishment Judgment within 3-6 weeks after filing your Application for Garnishment Judgment (FORM 5).

STEP 5A [IF APPLICABLE]: If a request for hearing is filed to object to the garnishment

If the judgment debtor objects to the garnishment and files a Request for Hearing (Non-Earnings) (FORM 8), the Court should set a hearing date within 5 days after the request is filed. The Judge may not sign the Garnishment Judgment (FORM 6) until the hearing has been held. Some of the more common objections include: lack of notice, lack of jurisdiction, invalid or satisfied judgment, exempt money is being garnished (\$150 in bank account, welfare, worker's compensation, child support or other potentially exempt monies), or exempt property is being garnished. There may be other reasons as well. Additional information concerning exemptions can be found at A.R.S. §33-1101-1130. It is important for the judgment creditor to attend this hearing.

STEP 5B [IF APPLICABLE]: WHAT TO DO IF YOU DO NOT AGREE WITH CLAIMS MADE IN THE GARNISHEE'S ANSWER OR DO NOT RECEIVE ANY NON-EARNINGS PROPERTY FROM THE GARNISHEE

A judgment creditor who does not agree with the Garnishee's Answer, or does not receive any property from the garnishee to which the judgment creditor is entitled can file a Request for Hearing (FORM 14) and the Court will hold a hearing on the request.

If you desire to release the garnishee and/or judgment debtor from the garnishment:

1. The Petition and Order Discharging Garnishee (FORMS 12 & 13) can be used to release the garnishee that turns over property in response to the Writ of Garnishment or in other appropriate circumstances. Once it is file, mail a copy to the garnishee, the judgment debtor and any other creditor who has asked to be notified. This can be done even if the garnishee's payment does not completely satisfy the judgment debtor's debt.

2. A Satisfaction of Judgment (FORM 16) can be filed with the Court to establish that the judgment has been fully paid off or otherwise satisfied. Mail a copy to the judgment debtor.

Frequently Asked questions

1. **Can I get back money I paid the constable or process server for service on the garnishee?**
Yes. There is a place on the Application for Garnishment Judgment to record this amount. The fee is paid to the constable or process server. This cost is added to the total amount included in the garnishment. As judgment creditor, you are responsible for arranging for service of process.
2. **If the garnishee has money or property belonging to judgment debtor, will I collect all the money owed to me?**
Possibly. There are certain kinds of money or property that may be exempt from collection. Additional information concerning exemptions can be found at A.R.S. §33-1101-1130.
3. **What are “earnings?”**
The term “earnings” means compensation owed to an individual for personal services or work performed by the individual for another. This compensation may be called wages, salary, commissions, bonuses or something similar. “Earnings” include periodic payments made pursuant to a pension or retirement program. “Earnings” become monies upon their payment by the employer to the employee, except payment into a pension or retirement fund. Money in a pension or retirement fund is no longer classified as “earnings” once it is disbursed to the employee.

- These forms are guides only and are not intended to be legal advice.
- These forms are not tailored for every fact situation.
- While not mandatory, parties should have all documents reviewed by an attorney who specializes in post-judgment proceedings.