



## November 2017 Tip of the Month

### There is no such thing as “judgment proof”.

Submitted by Glen Drew, VLN Resource Attorney & Program Manager

#### “Judgment Proof” is a Common Expression with No Statutory Definition:

Many low-income clients have exempt (protected) income and/or exempt assets. However, the fact that a low-income client may have exempt income or assets does not mean that he or she will not suffer negative consequences if that individual is unable to meet his or her financial obligations and collection action is taken against that person. Attorneys will sometimes advise low-income clients who have exempt income and exempt assets that they are “judgment proof”, and, therefore, they need not worry about a creditor or debt collector pursuing collection action, commencing a lawsuit, or obtaining a judgment. This advice can give a person who has exempt income and/or exempt assets a false sense of security when confronted with collection action. Neither Chapter 571 regarding garnishment nor Chapter 550 regarding executions, redemption, and exemptions of the 2017 Minnesota Statutes contain any statutory definition of the term “judgment proof”. Nor does the federal Bankruptcy Code define the term “judgment proof” in its enumerated definitions. The term “judgment proof” is merely a common expression or form of shorthand frequently used by lawyers that is often wide open to interpretation and easily misconstrued in the mind of a client.

#### Claiming Exemptions Often Requires Action on the Part of a Debtor, Not Passivity:

Claiming exemptions often requires action, not passivity, on the part of a judgment debtor who has lost a lawsuit and is being confronted with collection action. Most debt collection attorneys in Minnesota will attempt to collect on judgments won by their clients by attempting to levy or garnish<sup>1</sup> a judgment debtor’s earnings or funds held in financial institution accounts. There are only two

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<sup>1</sup> Although there are three different methods under Minnesota law for a creditor to use to attempt to collect money from a debtor ([1] a sheriff’s levy pursuant to [Minn. Stat. § 550.136](#); [2] the attorney’s summary execution pursuant to [Minn. Stat. § 551.06](#); and [3] garnishment pursuant to in [Minn. Stat. § 571.92 through 571.926](#)) this tip will refer generally to these methods as “levy” or “garnishment” without further exposition of the subtleties and minutia of all of these laws and other laws related to levy, garnishment, and exemption of funds held in financial institution accounts.

“automatic” exemptions that are likely to apply in such a situation that require no action on the part of a judgment debtor.

**Only Two “Automatic” Exemptions Are Likely to Apply in Minnesota:**

1. In the context of **garnishment of earnings**, under current Minnesota law all of a judgment debtor’s earnings are exempt from levy or garnishment if the disposable earnings are less than \$290.00 per week (40 multiplied by the federal minimum wage of \$7.25 per hour). Therefore, an employer/garnishee should not turn over any of the judgment debtor’s earnings that are less than this amount in response to receipt of a garnishment summons served by a judgment creditor. For example, if a judgment debtor is employed part time earnings \$10.00 per hour and working 20 hours per week then all of the debtor’s earnings will be exempt because the debtor earns only \$200.00 per week, which is less than \$290.00. If a debtor’s after-tax earnings are more than \$290.00 per week, then 75% of the debtor’s earnings are exempt and an employer/garnishee will only turn over 25% of the debtor’s after-tax earnings in response to receipt of a garnishment summons. See [Minn. Stat. § 571.922](#) for more information regarding limitations on garnishment of earnings and [Minn. Stat. § 550.37, subd. 13](#) regarding exemptions of earnings after deposit into a financial institution account.
2. In the context of **garnishment of funds held in financial institution accounts**, federal regulations create an automatic exemption that protects funds held in a financial institution account into which certain types of federal benefits (*e.g.*, Social Security, Veteran’s benefits) are directly deposited by the federal government agency that disperses the benefit money. This automatic exemption protects funds held in a bank or credit union account so long as the balance of the account does not exceed twice the monthly benefits amount. For example, if a judgment debtor receives \$1,000.00 per month in Social Security benefits, and these benefits are directly deposited into just one bank account, then the debtor may have up to \$2,000.00 in that bank account which will be protected by the automatic exemption. See [31 C.F.R. §§ 212.1 to 212.12](#) for more information regarding garnishment of accounts containing federal benefit payments and this automatic exemption.

## No Automatic Exemption for Funds Held in Financial Institution Accounts that Do Not Receive Deposits of Federal Benefits Payments:

There are many ways that a low-income person who has only exempt income may put said income at risk of levy or garnishment. Pursuant to [Minn. Stat. § 550.37, subd. 14](#) all of the earnings of a person who is a recipient of government assistance based on need, or who has been a recipient of government assistance based on need within the last six months, are exempt from levy or garnishment for up to sixty (60) days after deposit into a financial institution account. However, this exemption is not automatic so any exempt earnings deposited into a bank account by a judgment debtor will be frozen or put on hold by a bank or credit union in response to receipt of a garnishment summons. The judgment debtor will then have to jump through a legal hoop and actively claim an exemption in hopes of securing the release or return of the exempt funds to the debtor. This process takes time, during which any checks the debtor had written may bounce causing a series of other potentially disastrous financial and/or legal problems for that person. Additionally, many financial institutions routinely charge their customers levy or garnishment processing fees.

Even receipt of federal benefit money is not in itself guarantee that said funds will be automatically protected. Some recipients of Social Security and Supplemental Security Income (SSI) benefits receive their benefit payments via a debit style account that is accessed using a Direct Express® card. With the Direct Express® card, federal benefits payments are directly deposited onto the card account so that recipients can use the card to make purchases or get take out cash. However, if a Social Security or SSI recipient then deposits this money into a traditional account at a bank or credit union, the benefit money is not protected by an automatic exemption, and the financial institution will freeze or put a hold on any funds in any accounts in debtor's name in response to receipt of a garnishment summons. The debtor will only get notice of any attempt to levy or garish after the fact and after his or her funds are frozen and will then have to claim an exemption by completing a three-page form called an [Exemption Notice](#).

Many pro se debtors have great difficulty completing the Exemption Notice. The burden of proof is on the judgment debtor to show that any funds claimed as exempt came from an exempt source. The Exemption Notice requires the debtor to send the creditor the debtor's bank statements for the sixty (60) day period immediately preceding the garnishment. Many debtors fail to include these bank statements when sending the creditor the completed Exemption Notice. This often results in a creditor's counsel objecting to the exemption claim and scheduling a hearing before a District Court

judge who will decide whether all or part of the debtor's funds are exempt. The debtor will not have access to his or her funds claimed as exempt during the objection proceeding, which has the potential to wreak financial havoc in the life of the debtor. Even if all of the exempt funds are eventually released or returned to the debtor, the debtor may still be responsible for fees and penalties such as bounced checks, overdraft charges, and levy/garnishment processing fees.

### **Being Sued Is Never Fun & Not All Exemptions Last Forever:**

Even if a debtor has only exempt income and exempt assets that cannot be taken from the debtor in satisfaction of a judgment, and the debtor knows this, it is still unnerving and stressful for a debtor to be sued and have to deal with post-judgment collection action for the ten-year life of a judgment. Recipients of Social Security benefits are elderly or disabled and are often ill-equipped to deal with stress of litigation and post-judgment collection action. Additionally, many programs that are enumerated as forms of government assistance based on need in [Minn. Stat. § 550.37, subd. 14](#) have time limits. Federal welfare reform imposed a 60-month lifetime limit on the receipt of assistance funded by Temporary Assistance for Needy Families (TANF), and Minnesota's state welfare program, Minnesota Family Investment Program (MFIP), includes this 60-month limit with limited exemptions and extensions. Given that a judgment is valid for ten years in Minnesota and can be renewed for an additional ten years if not satisfied, the fact that someone might be "judgment proof" today does not mean that they will be able to claim an exemption in years to come, especially if their goal is to return to full-time employment.

Moreover, many debt collection law firms continue to serve garnishment summons, demands for disclosure, post-judgment discovery requests, and sometimes even notice a deposition against judgment debtors whom the debt collection law firm knows to have exempt income and assets. VLN routinely sees creditors and debt buyers commence litigation and attempt to collect on judgments against debtors who have provided the debt collection law firms with proof that they have exempt income and exempt assets. Many debt collection law firms seem to send collections communications or attempt to take collection action against debtors whom have previously claimed exemptions at least twice a year for the life of the judgment.

### **Other Consequences of Entry of Judgment Against a Debtor with Only Exempt Income:**

Even if a debtor has no earnings or bank accounts to garnish, the debtor may still suffer negative consequences because of entry of judgment. A judgment automatically becomes a lien on any abstract

real property located in the county in which the judgment is docketed in Minnesota. The judgment lien may prevent an elderly home owner from obtaining a reverse mortgage or may eat up equity if the home is sold. A debtor will likely not be able to obtain new lines of credit such as credit cards, car loans, or mortgages as a result of having an unsatisfied judgment on his or her record. If the debtor is a renter, obtaining new rental housing will also likely be difficult with an unsatisfied civil judgment on the debtor's credit report. Gift of money and inheritances are not exempt under Minnesota law even if the person receiving the gift or inheritance is a recipient of government assistance based on need.

### **Bankruptcy is Often the Best Option:**

Discharging debts by filing bankruptcy is often the best option for a "judgment proof" debtor to obtain peace of mind and move on with his or her life. Even if the debtor has only exempt income and exempt assets, the prospect of being sued one or more times and then having to deal with post-judgment collection action for a minimum of ten years is an abysmal prospect.

### **Please Volunteer to Write Letters to Creditors of Debtors Who Have Exemption Income & Assets**

Unfortunately, VLN does not have a sufficient number of bankruptcy volunteers to file bankruptcy for all of the clients who have only exempt income and exempt assets. If you are interested in advising a debtor who has exempt income and assets regarding the issues discussed in this tip and writing letters to the debtor's creditors to inform them of exemptions the client may have to claim please contact Glen Drew at (612) 752-6659 or via email at [glen@vlmn.org](mailto:glen@vlmn.org).