

## WHAT TO DO IF YOU GET SUED

**First, don't panic!** Yes, I know it's easy to say that, because it's not my money at stake. So perhaps I should rephrase and say that *after you stop panicking*, take stock and see where you are.

Dale Carnegie, in one of his superb books *How to Stop Worrying and Start Living* made a point that has stuck in my mind for some 40 years or so. He said that whenever you are faced with a problem, first determine the *very worst that can happen*. Next, if the very worst happens, could you live with that? Because most of the time, the worst won't happen.

As a side note, some time back I sailed into a new year with three major worries. And I had put in some serious worry time on all up to that point. At the end of the year, I reviewed. The first worry, that an unhappy client might sue me, did not materialize. The second worry, a case that I knew I would have great difficulty in winning got settled instead to everyone's relative happiness – especially mine. And the third major worry, as I looked back at the end of that traumatic year? Well, I couldn't even remember what it was.

So ask yourself the following questions.

### 1. What is the worst that can happen?

Let's say that a creditor sues you. Even if you ignore the lawsuit, or go to trial and lose, *you cannot go to jail!* It is not a criminal offense if you don't pay your bills. Even if you take advantage of an ATM's liberality and take cash advantages on your Fleet credit card, it is not a criminal act to be unable (or just plain refuse) to pay it back! I keep repeating this in hopes that it will sink in. Debtor's prison has gone the way of the spittoon and the bustle; with just a tad of good fortune, none will ever return.

The worst that can happen depends on the state you live in. And the worst can only happen if someone sues you, gets a judgment against you (either because you don't do anything, or because you lose at trial), and then takes steps to collect on the judgment. See [How to Defend Yourself in a Civil Lawsuit](#) for more details.

Generally you have up to six types of assets at risk of being garnished. That is a legal term that means getting money out of you.

- a. Your wages
- b. Your business
- c. Your bank accounts
- d. Your tax refund
- e. Your home
- f. Other real estate you own
- g. Personal property you own

**a. Your wages.**

If you work for an hourly rate or a salary, sooner or later a determined creditor with a judgment against you will find out where you work. Now in some states, a creditor cannot garnish your wages. So first look in Appendix E. Are you in a state that protects against garnishment? If so, then the creditor has lost his main way of collecting.

If your state *does* allow creditors to garnish, how much can they get? The general rule is 25% of your take-home, but the law varies state to state. Even if your state permits garnishment of wages, is your wage above the poverty guideline? If you don't bring home at least the minimum established by Federal law, you are exempt.

**Potential for this happening:** high probability if you work for a salary or wages and are not state-protected.

## **b. Your Business**

If you are an independent contractor, say a carpenter or a free-lance writer, there are no wages to attach. So this becomes a non-issue as well. Strike two for the creditor with the judgment.

On the other hand, if you have a corporation you can handle things differently. A corporation is considered a "person" by law; a different person than *you* – if you have kept your books and records correctly. The only tack that a collection attorney is apt to take against your corporation is to try to attach your wages if the corporation pays you a salary.

**Case Study:** A farmer in Wisconsin owned a two-person corporation. His corporation received a wage garnishment request. The farmer quite his job as an officer of the corporation and became an independent consultant. No wages to garnish.

**Potential for this happening:** Slim.

As an alternative, if you have a business that rings up sales on a cash register, a creditor can put a "keeper" in to ladle the receipts directly into the creditors coffers. If you own a grocery or hardware store, for example, a Sheriff or Marshall (or someone appointed by the Court) would sit by the register and empty it at the end of each day.

**Potential for a "keeper:"** Unlikely. This is expensive; marshals and sheriffs as keepers don't come cheap. Creditors know this is an excellent way to force someone into bankruptcy. That could mean the creditor having to give up any money collected. And eat the cost of the keeper in the bargain.

### **c. Your Bank Accounts**

Time to play heads up here. Your bank accounts can be garnished in every state. Remember, the creditor knows where your last payment came from. Usually (read that as “always” to play it safe) the creditor will send a garnishment order to that bank. If you still have an account there, the creditor will vacuum out all the money you have on that particular day. Every account that has your name on it as a signer. If this happens, sometimes there are damage control steps you can take. See [How to Defend Yourself in a Civil Lawsuit](#), Chapter 13 for more details.

**Potential for this happening:** Quite high.

### **d. Your Tax Refund**

You may be a person who gives the Government money during the year so that they will give it back to you (with no interest, of course) when you file your tax return. If so, a creditor can garnish your return. You file, and your nice refund goes directly to the creditor. To prevent this, increase your exemptions so that at the end of the year you owe a slight amount of tax. How do you do this? Ask your tax man or someone in accounting at your workplace.

As to the nice little refund that you grow so fond of, give it to yourself instead of Uncle Sam. When you increase your exemption, you get more money in your paycheck. Figure out how much more. Each pay period, put the difference into a savings account (in a different bank, of course). There’s nothing for the creditor to garnish, and if you must, you can withdraw it all on April 15<sup>th</sup> and do what you normally do with it. And no, I’m not serious about the “doing what you normally do” part. See

*Staying out of Debt* at [www.debtslasher.com](http://www.debtslasher.com) for more sober suggestions.

**Potential for this happening:** Ten percent of the creditors take this route. But that is like unemployment. There may be 6% unemployment, but the individual is either 100% or 0% employed. Same with bank accounts. Ignore the "ten percent." Assume that it will be 100% for you and act accordingly.

#### **e. Your home**

Upon getting a judgment, a creditor will usually record what is called a judgment lien. This attaches to any real estate you own including your home, *but only in the county where the creditor recorded the lien*. In most states you have a Homestead Exemption for your personal residence. If you sell your home, this is the amount of money that first goes to you before a judgment creditor with a recorded lien gets a penny. Ask your local real estate attorney what the Homestead Exemption is in your state.

As to your residence, seldom will a court go along with letting a creditor foreclose on a small judgment. The creditor can wait, however, until you refinance. You will have to deal with the judgment at that time.

Alternatively, you may have to deal with the problem when you sell. Depends.

**Example:** You own a home with a mortgage. A creditor records a judgment lien of \$10,000 against your home.

You have a sale of your property that will net you \$50,000 after paying off your mortgages and the costs of the sale. If you live in Arizona, the Homestead exemption is \$60,000. That means you get the whole \$50,000;

there is nothing for the creditor to get. If on the other hand you lived in West Virginia with a homestead of only \$5,000 you would get that amount first. The creditor would get his \$10,000 next. The rest, \$45,000 would also go to you. Live in Florida with this problem and math, you would get \$45,000 and the creditor would get \$5K of his \$10K.

**Note:** the Homestead rule has changed with the new Bankruptcy law signed by President Bush in April 2005. Most of the law takes effect only six months later in October. Homestead changed immediately, however. New law: if you file bankruptcy, you get can no longer have the choice between the Federal Homestead and a state homestead that may be higher. Instead, the limit is \$125,000.

So if you live in Massachusetts, you can *sell* your home and get the first money up to \$300,000. If you declare a Chapter 7 bankruptcy, however, and your equity is greater than \$125,000 the court will order your property sold. You get the first \$125,000 and the rest goes into the bankruptcy pot to be split up among the creditors.

**Potential for this happening:** Creditors almost always put a lien against your home if they see that you own one. Rarely to they bother trying to foreclose, even if state law permits.

#### **f. Other Real Estate you own.**

Homestead protection only applies to your residence. If you own some vacant land for instance, a creditor can foreclose and apply the proceeds to the judgment. After the foreclosure sale, if there is money left over after the creditor gets his, you get the rest. If there is not enough

to pay the whole judgment, you are still on the hook for the balance.

If you own rental property, the creditor has two shots at you. It can collect the rents or it can foreclose.

**Potential for this happening:** Collecting rents: slim to none. A lot of bother for the creditor. Foreclosure: occasionally it happens.

If your property is in a county other than where the creditor recorded the judgment lien, your concern diminishes. If the property is in a different state altogether, to foreclose the creditor has to hire an attorney in that other state to help get a "sister state judgment." That requires more effort than the collection attorney is willing to put forth.

**Potential for a "sister state judgment" happening:** Not likely. To begin with, the creditor can usually find this out-of-state (or other-county) property by sending you Interrogatories after suing you or after getting a judgment. Some attorneys do this; most do not.

g. Personal property you own.

The major items here are cars and trucks. If you are still making payments, in most cases there is no equity and nothing to excite the creditors. If you own a vehicle fully paid for, a creditor may or may not be interested. It depends on the Blue Book value, its condition, and the exemption your state allows against the collection efforts of creditors.

**Potential for this happening:** little to lose sleep about.

Other items such as furniture and computers bring very little at an auction sale, so creditors don't bother with them. Many states have "one-action" rules. That means such a creditor gets to pick: take the property back or sue; but the creditor can't do both.

## 2. What can or should you do about it?

The more categories of assets that you have that might attract creditors waving judgments around, the more attention you must pay. But this also depends again on the state in which you live.

So you have four choices:

1. Do nothing. The creditor will get a judgment, and try to collect from you.
2. Hire a lawyer to represent you in the lawsuit.
3. Defend the lawsuit yourself with on-going advice from a lawyer.
4. Defend the lawsuit yourself.

If you are looking at choice 3 or 4, See [How to Defend Yourself in a Civil Lawsuit](#), for more details.

Also, much is the creditor suing you for? \$1,500? \$15,000? \$50,000? Assume the worst at first; would you have the capability of paying off a lump sum like that?

## 3. How much time do you have to Act?

Look at the summons. Somewhere it will tell you how long you have to "answer" it. This is usually either 20 or 30 days from the time that someone gives you the summons. So as soon as you get it, write the date on it so that you don't forget.

#### 4. What is it that you have to do?

The summons is not always a model of clarity. Most say something about having to “answer.” This has one of two interpretations: file a written response with the court or show up in court. If you are not sure of which to do, call the courthouse. Ask for the Civil Clerk. Inquire.

#### 5. Can this be negotiated?

Ask. Call the attorney, whose phone number will be on the summons someplace. Most attorneys will give at least a little to avoid the risks and costs of a suit. You know the old saying, “Better a bird in hand than one who is files bankruptcy.” Or something like that.

### Wage Garnishment

A creditor gets a judgment against you one way or another, and then garnishes your wages. The first notice you will get of this is from your employer that while your take-home remains the same, part of it will go to the creditor’s home.

By now you should have looked at Appendix E to see what kind of a new budget you will be forced to work with. If the reduced take-home leaves you short of being able to maintain the necessities of life, you can oppose the judgment. What you do depends on where you live. In California, for example, there are some forms you fill out and file with the court explaining the amount you CAN afford. In other states, you just walk into a convenient courtroom and ask the clerk for a few minutes with the judge. To find out the procedure in your state, the easiest way is to start with the Civil Clerk in your friendly courthouse. He/she will generally point you in the right direction.

If two creditors get garnishments against you, they must alternate at the trough. Only one can garnish at a time, usually for about six months; then it is the next creditor’s turn.

2220 Otay Lakes Rd. #502-94  
Chula Vista, CA 91915  
Phone: (619) 271-7245 Fax: (775) 703-7661  
[efagan@efaganlaw.com](mailto:efagan@efaganlaw.com)