

# How to Protect Your Income and Property

Vermont law protects some property and income from being taken by courts or by creditors trying to collect a debt. These are called exemption laws. Exemption laws let you keep property and income you need to support yourself and your family. A court or creditor cannot take your exempt property or force you to sell it. A court or creditor cannot make you pay a debt with exempt income.

## Court Judgments

If you are sued, the court might make a court order that says you owe the money. This is called a Judgment. But the Judgment does not mean you have to make payments. If your income and property is exempt, you do not have to make payments on the Judgment.

## Exemptions that Protect Income

### **A. IF YOU GET STATE ASSISTANCE, ALL OF YOUR INCOME IS PROTECTED FROM DEBT COLLECTION. 12 V.S.A. § 3170**

If you got assistance in the past two months from the Vermont Department for Children and Families or the Department of Vermont Health Access, all your income from all sources is protected against creditors. Your income is protected if you received assistance from any of these programs:

- Reach Up (RUFA)
- General Assistance (GA)
- Food Stamps (3SquaresVT)
- Fuel Assistance
- Essential Person benefits for the caretaker of a disabled person
- Childcare subsidies from DCF Family Services Division
- PSE (assistance from DCF for low-income parents who are college students)
- Medicaid
- Dr. Dynasaur (for my children)
- SLMB (payment of Medicare premium by Medicaid program)
- QMB (partial payment of Medicare premium by Medicaid program)
- QDWI (payment of health insurance premium for working disabled)
- Vermont pays part of Medicare premiums (SLMB, QMB, QDWI)
- VPharm
- Healthy Vermonters

## B. EXEMPTIONS THAT PROTECT EMPLOYMENT INCOME

**Consumer Credit Loans:** There are special rules for consumer credit loans, which are loans or credit cards used to buy something for yourself, your family, or your household. If you are sued for one of these debts and you go to court and explain what your income is, the judge will protect **part** of your income.

How much is protected? You can protect either (a) 85% of your weekly after-tax earnings, or (b) \$290.00 of your weekly after-tax earnings (40 times the current federal minimum hourly wage of \$7.25), whichever is larger. (12 V.S.A. § 3170(b)(1) and (2)).

**Non-Consumer Debts:** If the debt did not come from a consumer credit transaction (for example, if it is from a negligence lawsuit or an old rent debt), then you can protect in court either:

- a) 75% of your after-tax weekly earnings; or
- b) \$217.50 of your weekly after-tax earnings (30 times the current federal minimum hourly wage of \$7.25, whichever is larger. (12 V.S.A. § 3170(b)(1) and (2)).

If your income is higher than these amounts, you can ask the judge to protect a higher amount, up to what you need to pay for your weekly household expenses. At a hearing, take a list of your weekly household expenses and ask the judge to exempt additional income so that you can meet your weekly expenses for necessities for maintaining yourself and your family. (12 V.S.A. § 3169(a)(4) and § 3170(b)(3))

As explained above in Section A, all your employment income is protected if you received any state assistance in the past two months from the Vermont Department for Children and Families (DCF) or from the Department of Vermont Health Access, even if you earn more than the amounts listed in this section.

## C. EXEMPTIONS THAT PROTECT OTHER KINDS OF INCOME

Other exemption laws apply to income that is not from earnings. All income from the following sources is exempt and cannot be taken to pay a consumer debt:

- 1) Social Security and Supplemental Security Income (SSI). (42 U.S.C. §§407 and 1383);
- 2) Veterans Benefits. (38 U.S.C. § 5301);
- 3) Unemployment Compensation Benefits. (21 V.S.A. §1367);
- 4) Workers Compensation Benefits. (21 V.S.A. § 687);
- 5) Reach Up, General Assistance, or other Public Assistance Benefits. (33 V.S.A. §124);
- 6) Pension Benefits. (29 U.S.C. § 1056(d), 45 U.S.C. § 231m, 5 U.S.C. § 8346);
- 7) Self-directed retirement accounts (for example- IRAs, 401k). (12 V.S.A. § 2740(16));
- 8) Insurance Payments from Fire, Life, or Disability Insurance, payments from certain Annuity Contracts, Fraternal Benefit Society Benefits. (8 V.S.A. § 3706-3709, 4478; 12 V.S.A. § 3020)

## D. EXEMPTIONS THAT PROTECT YOUR PROPERTY

These exemptions apply to the things you own. This list covers the most common property exemptions but it is not complete. To get more detailed information about your exemption rights, you should contact an attorney.

- 1) Your interest, up to \$125,000 in equity in your residence or homestead, including a mobile home. 27 V.S.A. § 101; 9 V.S.A. § 2603(d);
- 2) Your interest, up to \$2,500 in total value, in a motor vehicle or motor vehicles. 12 V.S.A. §2740(1);
- 3) Your interest, up to \$700 in value, in bank deposits or deposit accounts. 12 V.S.A. §2740(15);
- 4) Your interest, up to \$5,000 in total value, in tools and books of your profession or trade. 12 V.S.A. §740(2);
- 5) Your interest, up to \$2,500 in total value, in household furnishings, goods or appliances, books, clothing, animals, and musical instruments that are used primarily for personal, family, or household use by you or your dependents. 12 V.S.A. §2740(5);
- 6) Your interest, up to \$500 in total value, in jewelry held primarily for personal, family, or household use. A wedding ring, regardless of value, is totally exempt. 12 V.S.A. §2740(3), (4);
- 7) Your interest up to \$5,000 in growing crops.
- 8) The Wildcard Exemption. Vermont allows you to choose any additional property to exempt. This law can work two ways.
  - a) If you have used up all your other exemptions you can exempt up to \$400 in value in any additional property you choose;
  - b) If you have not used up your other exemptions you can exempt additional property valued up to a total of \$7,000. This applies if you did not use up the full exemption for growing crops, motor vehicles, tools of your trade, household items, and jewelry.

### **How Do You Determine the Value of Your "Interest" in a Particular Kind of Property?**

Most exemptions apply to your interest in property, which may be less than the value of the property itself.

For example, if you own your home, your interest is equal to the value of your property minus the amount you owe the bank.

For example, if you own only part of the property, your interest in the property is how much your part is worth.

To determine the amount of exemption you qualify for, use your best estimate of what you would get for the property if you sold it right now in the condition it is in. For an automobile, you may refer to the current "NADA" or "Blue Book" value for your car. A realtor may be able to tell you what your house would sell for.

## What About Married Couples Who are Both Sued as Defendants?

In a married couple, each person may claim the full range of personal property as exempt. However, a married couple may only apply the homestead exemption once to the value of their residence.

## Can I go to jail for owing money?

No. Vermont law says that people cannot be sent to jail for owing debts. If you can't afford to pay, you must show the judge that you can't afford to pay.

If you have heard of someone being arrested or ending up in jail in a debt collection lawsuit, it was probably not just because they owed money. It is probably because they broke some other court rule or requirement. It may have been that they got legal paperwork called Financial Disclosure or Interrogatories that had questions they had to answer, and they failed to answer the questions. If that happens, the court will sometimes issue an arrest warrant. If this happens, the person can avoid jail and the problem can be worked out by answering the required questions.

Another way someone can end up going to jail is for contempt of court. Contempt of court is when you are able to follow a court order but you don't follow it. If you are unable to follow a court order to pay because you don't have the money, then you must explain this to the judge and it should not count as contempt of court. It is illegal for a debt collector to threaten to send someone to jail if the person cannot actually be sent to jail at that time. Debt collectors sometimes make illegal and false threats about sending someone to jail.

## E. HOW TO MAKE AN EXEMPTION CLAIM

Voluntary Payment Agreements. When you are served with a complaint, you are asked to agree to repay. You do not have to agree to this. You have the right to refuse to make payments voluntarily from exempt income or exempt property.

Small Claims Court Disclosure Hearing. If there is a judgment against you and you have been directed to appear at a disclosure hearing, **you must go to the hearing** and tell the judge about what income and property you claim as exempt. The judge will decide whether you must pay out of any nonexempt income or assets you have.

Motion for Trustee Process Against Earnings. If there is a judgment against you the creditor may try to get your employer to take money out of your earnings to pay them back. If this happens you will get a notice to appear at a hearing on a motion for trustee process against your earnings. You must go to this hearing and make sure that the judge considers your claims for exemptions.

Writs of Attachment. A writ of attachment is a paper issued by the court ordering the seizure and sale of your property to pay a debt. If you are served with a writ of attachment, you have a right to claim the property exemptions at a hearing. If you are not notified of a hearing date when you get a writ of attachment, you must write to the court and ask for an immediate hearing to stop the attachment of your exempt property.

Foreclosing on a Judgment Lien Against Your Home. If a creditor has a judgment against you for an unpaid debt, the creditor can try to take your home. This is called foreclosing on a judgment lien. The \$125,000 homestead exemption applies to protect your home. If you are served with a foreclosure complaint and summons seeking to execute a judgment lien against your home, you can claim the homestead exemption in a written "answer" filed with the court. However, keep in mind that the homestead exemption does not apply to someone who has a mortgage on your property, like the bank you gave a mortgage deed to when you took out the loan to buy your house.

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