

## Debt Collection: Money Judgments and Frozen Bank Accounts Information for Consumers

Debt collection was the #1 complaint category for the Department of Consumer Affairs (DCA) in 2008, with complaint volume increasing nearly 70% compared to 2007. Although DCA can mediate many of the complaints we receive, we cannot mediate issues that involve money judgments and frozen bank accounts. To help you protect yourself—and your money—DCA created this fact sheet, which includes where to turn when you need assistance.

### Money Judgments

#### What is a money judgment?

If a person or company (known as the “creditor”) sues you, claiming that you owe a certain amount of money, and the judge decides in the creditor’s favor, the judge awards a “money judgment.” The creditor has a right to try to collect that money from you or “satisfy the judgment.” If a creditor has a money judgment against you, that creditor may try to take money directly from your bank account to pay off the debt.

#### If I have a money judgment against me, what happens to the money in my bank account?

One way a creditor can try to collect on a money judgment is to serve legal papers to the bank or credit union requiring it to restrain or “freeze” a consumer’s bank account. This allows a creditor to take money directly from the account.

#### Can a creditor take all of my money to satisfy a money judgment?

In New York State, as of January 1, 2009, even if a creditor has a judgment against you, the creditor cannot take, restrain, or freeze all of the money in your account—*no matter how much you owe*.

### Exempt Funds

Under State and Federal law, certain money **may never** be taken by creditors to satisfy money judgments. (See *Are there exceptions to the Exempt Income Protection Act?*) This money is considered “exempt funds.” You may choose to use exempt funds to pay a debt you owe, but a creditor cannot freeze or forcibly take those funds from you or your bank account to pay off a debt.

Exempt funds include the following:

- ✓ Supplemental Security Income (SSI)
  - ✓ Social Security retirement
  - ✓ Social Security Disability (SSD)
  - ✓ Public assistance (Temporary Assistance for Needy Families, TANF)
  - ✓ Income earned while receiving SSI or public assistance
  - ✓ Disability benefits
  - ✓ Workers’ compensation benefits
  - ✓ Veterans’ benefits
  - ✓ Black lung benefits
  - ✓ Spousal support, maintenance (alimony), or child support
  - ✓ Railroad retirement
  - ✓ Unemployment benefits
- ✓ **Wages:** Ninety percent (90%) of your wages earned during the past 60 days are exempt *if* you need them for basic needs, such as shelter (rent or mortgage), food, and medicine. This means that if you earn \$500 every two (2) weeks, up to \$3,600 would be exempt from an account freeze, if you need that money for critical expenses like rent or mortgage, food, or medicine.
- ✓ **Most public or private pensions:** Public or private pensions are usually exempt from collection.

### Exempt Income Protection Act of 2008

Under a new law effective January 1, 2009—the Exempt Income Protection Act of 2008—some money held in bank accounts is protected to ensure that consumers have sufficient funds available to meet their basic needs, such as rent, food, and medicine.

Beginning July 24, 2009, your bank may never take or freeze the first \$1,740 in your bank or credit union account to pay a judgment, whether or not your account has exempt funds. (Previously, the minimum amount was \$1,716.)

### **Are there exceptions to the *Exempt Income Protection Act*?**

Yes. Certain types of creditors, such as those collecting on student loan debts or child support arrears, may be able to freeze your bank account even if the account contains exempt funds. You should consult a lawyer to determine the best course of action. (See *Where can I get more information?*)

### **What if my bank account contains exempt funds?**

If you get **direct deposit** of the exempt funds listed in this fact sheet, your bank must leave at least \$2,500 in the account. If your exempt funds are not directly deposited into your account, your bank may not be aware that you have exempt funds in the account, and might freeze funds you have over \$1,740.

You may have to file an Exemption Claim to keep a creditor from taking the exempt funds if 1) your money is not directly deposited into your account or 2) you have more than \$2,500 of exempt funds.

### **What do I do if my bank account contains exempt funds and is restrained or frozen anyway?**

1. If your account is restrained or frozen, your bank must send you an **Exemption Notice** and **Exemption Claim Form** within two (2) business days of freezing your account. Read the Notice and Form! The Notice will help you figure out whether your money should be exempt from creditors and how to unfreeze your account. The Form will list contact information for the creditor's attorney. **You must complete the Form and mail it to your bank and the creditor's attorney within 15 days to prevent the creditor from taking your money.**
2. Call the creditor's attorney to tell him/her that your account contains exempt funds, and to request that your account be released right away. Be prepared to send proof that your account contains exempt funds, such as copies of bank statements, in case the attorney asks for it.

### **What if my account with exempt funds is frozen and I do not receive the Exemption Notice and Exemption Claim Form?**

1. Contact your bank immediately. You can call the customer service line or go to your nearest branch. Tell the bank that your account was frozen in error. Ask for the name, telephone number, and fax number of the creditor's attorney.
2. Call the creditor's attorney to tell him/her that your account contains exempt funds and ask the attorney to notify the bank to release your account immediately. Be prepared to send proof that your account contains exempt income, such as copies of bank statements.
3. Write a letter to the bank and creditor's attorney to confirm that your account was frozen, that there are exempt funds in the account, and that you did not receive the Exemption Notice or Exemption Claim Form.
4. Report your bank to the **New York State Banking Department** at 877-BANK-NYS or <http://www.banking.state.ny.us/csci.htm>. Reporting can help ensure your bank complies in the future.

### **What if the bank has charged me a "restraint fee?"**

If your account is wrongly frozen, your bank is not permitted to charge any restraint fee. Check your bank statement. Dispute the fee directly with your bank.

If your bank has wrongly charged you a restraint fee, report it to the New York State Banking Department at <http://www.banking.state.ny.us/csci.htm> or 877-BANK-NYS. Reporting can help ensure that your bank complies with the law in the future.

### **Where can I get more information?**

The following organizations can provide information and refer you to lawyers for advice or assistance. Please note that neither of these organizations can give you direct legal assistance.

**LawHelp:** <http://www.lawhelp.org/ny/>

**City Bar Justice Center:** Legal Hotline 212-626-7383 (Daily: 9am-1pm; Tuesday and Thursday: 4pm-7pm)

### **How can I get help budgeting or managing debt to avoid future account freezes?**

Call 311 or visit the Department of Consumer Affairs Office of Financial Empowerment (OFE) online at [www.nyc.gov/ofe](http://www.nyc.gov/ofe) to find free and low-cost financial education classes, workshops, and counseling throughout New York City to get help managing your money.