DEBT SETTLEMENT PROGRAM

CLIENT EDUCATION PROGRAM

The Creditor Has A Judgement

This Pamphlet is the last in a series which deals with the issues that are raised when one of your Program Creditors brings a lawsuit against you to collect their debt and recovers a Judgement.

It is not the purpose of this Pamphlet to either encourage or discourage you from representing yourself in Civil Court. We are merely trying to give you a brief summary of the legal process so that you can make a more intelligent decision as to whether or not you want to hire a lawyer or whether you want to try and handle the case yourself.

The subject of a creditor judgement and the various ways that a creditor can collect the judgement could fill a book and, in fact, several books have been written on the subject. Because the laws of every State regarding the collection of a Judgement are different it is outside the scope of this Pamphlet to deal specifically with each situation that may arise. This pamphlet has been written in order to review the most common collection methods employed by creditors and give you some suggestions that we believe will help you. As we have stated in the other pamphlets in this series it is not our purpose to discourage you from retaining an attorney (which we urge you to do if you feel that you need professional advice) but merely to help you understand the legal process and some of the options available to you.

What is a Judgement

A Judgement is a document issued by either a Civil Court or a Small Claims Court which states that the Plaintiff (the Creditor that brought the lawsuit against you) has won a lawsuit against you (the Defendant) and that the Defendant owes the Plaintiff a certain sum of money.

What the Creditor can do with this Judgement depends both on the law of the State where the Judgement was issued and the law of the State where the Creditor is trying to collect the Judgement. The following is a general look at the options available to a Creditor that is trying to collect a Judgement and the defenses that are available to you.

Creditor Actions

Garnish, Levy or Attach a Bank Account

This is usually the first asset that a creditor will proceed against in order to collect the judgement. The judgement is served on the bank by an officer authorized to serve civil process (a sheriff, process server, constable, etc). The bank will "freeze" the amount of money in your account at the time that the judgement is served and will hold the funds for the benefit of the creditor. Most States allow the bank to "offset" any money that you owe the Bank before they "freeze" the account, therefore, if you have a loan or owe other obligations to the Bank your money will be applied to these obligations instead of being held for the creditor.

Before a creditor can levy or attach your bank account they have to know the name of the bank where your account is. There are a number of ways that they will know this information. For example, If you have ever sent the creditor or the debt collector a check or filed a credit application then your bank account information is in their records. This applies not only to a checking account but to any savings accounts that you may have.

If you have been sued or have reason to believe that you will be sued it is a good idea to move your account to a different bank in order to protect your money from being attached by a creditor. In the event that a creditor succeeds in attaching funds in your bank account it is important that you notify the Program Administrator as soon

as possible. Usually the creditor does not "freeze" enough funds in your account to pay the entire debt and if you have a balance in your Client Settlement Account one of our debt settlement personnel will try to settle the entire balance by combining the "frozen" funds and some of the money in your Client Settlement Account.

As we stated previously the laws vary widely from State to State. There are usually exemptions which may protect all or a portion of the funds you have on deposit. However, these exemptions are usually "affirmative defenses" which means that in order to take advantage of one or more of these exemptions you must make your bank and/or the Court aware of the fact.

Wage **Garnishment**

Wage Garnishment is a legal procedure in which the some portion of the earnings of an individual are required by a Court order to be withheld by an employer for the payment of a debt.

Because of the fact that a wage garnishment is directed at a persons primary means of support it is regulated by both State law and a Federal law known as the Consumer Credit Protection Act (CCPA) Because wage garnishments are regulated by both State and Federal law the employee benefits from the fact that the law (either Federal or State) which provides the employee the most protection is the law that governs. For example, if more of the employees wages are protected from garnishment by State law then the State law governs and if more of the employees wages are protected from garnishment by Federal law then the Federal law governs. For this reason it is extremely important that you know what your protections are under State law. It is impossible to cover all the State laws in this pamphlet and we suggest that you speak with the Clerk of the Court where the wage garnishment action has been brought in order to find out what protection you are given under the laws your State. In many states when you are served with a wage garnishment the papers will include a form for claiming an exemption from the garnishment along with an explanation of the exemptions that are available if you qualify. It is extremely important that you read these forms carefully. If you do not understand these forms then go to the Court where the garnishment action has been brought and speak to one of the Court Clerks. Many Courts provide a consumer assistance person who will answer your questions and help you complete Court forms.

The Federal Consumer Credit Protection Act applies to all individuals who receive personal earnings (personal earnings include wages, salaries, commissions, bonuses and income from a pension or retirement program but does not ordinarily include tips) and to their employers. The protection provided by the Federal Consumer Credit Protection Act is as follows:

1. Employees are protected from being discharged by their employers because their wages have been garnished for any one debt. It does not, however, protect an employee from discharge if the employee's earnings have been subject to garnishment for a second or subsequent debts. Once again it is important to know your State's law since you may be protected from being discharged even if you have been garnished for more than one debt, and in that case State law would govern.

2. The amount of an employees earnings that may be garnished in any workweek or pay period is limited to the lesser of (i) Twenty-Five (25%) percent of the employees disposable earnings or (ii) the amount by which the employees disposable earnings are greater than 30 times the federal minimum hourly wage. This limit applies regardless of the number of garnishment orders received by an employer. As of July 24, 2009 the federal minimum wage was $7.25. "Disposable earnings" is the amount of employee earnings left after legally required deductions have been made for federal, state and local taxes, Social Security, unemployment insurance and state employee retirement systems. Other deductions which are not required by law, e.g., union dues, health and life insurance, and charitable contributions, are not subtracted from gross earnings when calculating the amount of disposable earnings for garnishment purposes. The Act specifies that garnishment restrictions do not apply to bankruptcy court orders and debts due for federal and state taxes nor does it affect voluntary wage assignments, i.e., situations in which workers voluntarily agree that their employers may turn over some specified amount of their earnings to a creditor or creditors.

The Federal CCPA is administered and enforced by the Employment Standards Administration's Wage and Hour Division. More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting your local Federal Wage and Hour office.

Violations of the Federal CCPA may result in the reinstatement of a discharged employee, with back pay, and the restoration of improperly garnished amounts. Where violations cannot be resolved through informal means, Court action may be initiated to restrain and remedy violations. Employers who willfully violate the discharge provisions of the law may be prosecuted criminally and fined up to $1,000, or imprisoned for not more than one year, or both.