

Can creditors garnish my WAGES?

Yes, but only within certain limits. A creditor can require your employer to garnish part of your wages to pay a judgment, but the creditor can only take EITHER:

25% of your “disposable earnings”

(your pay remaining after only those withholdings required by law are taken out).

OR

the part of your wages that exceeds 30 times the current Federal minimum wage (\$7.25 per hour as of 2011; see chart below) ...whichever figure lets you keep more.

See Idaho Code (I.C.) Section 11-206 and 207 and 29 U.S. Code Section 206(a)(1).

Exemptions based upon \$7.25 min wage:

If your paycheck is paid weekly...	...the amount garnished will be
less than \$217.50	NONE
\$217.50 - \$290	Amount above \$217.50
\$290 or more	Up to 25%
paid bi-weekly...	...amount garnished
less than \$435	NONE
\$435 - \$580	Amount above \$435
\$580 or more	Up to 25%

paid semi-monthly...	...amount garnished
less than \$471.25	NONE
\$471.25 - \$628.34	Amount above \$471.25
\$628.34 or more	Up to 25%
paid monthly	...amount garnished
less than \$942.50	NONE
\$942.50 - \$1256.67	Amount above \$942.50
\$1256.67 or more	Up to 25%

● Up to \$1500 per year in earned, but un-paid, wages cannot be garnished.

I.C. 11-605(11)

● **Also, you cannot be fired just for having wages garnished.**

I.C. 28-45-105

Can a creditor take my HOME?

Idaho’s **homestead exemption** can prevent the forced sale of your house or mobile home.

WARNING! this exemption only applies to unsecured debts, not to foreclosures!

It protects the house and land’s **net value up to \$100,000** (“net value” is the property’s market value minus all liens and mortgages).

- The law protects the house where you reside or intend to reside, plus surrounding land and related structures like barns or sheds.
- **Manufactured homes** are protected, whether or not you own the lot.
- **Unimproved land** is protected if you intend to live on it, build your primary house on it or put your mobile home on it.
- **If you sell your home**, the proceeds are exempt for up to one year *if you are going to use them to buy another home.*
- **Insurance proceeds** paid to cover damage to a homestead are also protected.

I.C. 55-1001, 1003, 1008

What do I have to do to claim the homestead exemption?

Generally, your primary residence is automatically protected and you do not have to act to protect your home. However, be aware of some **important exceptions:**

If you are absent from a property for six months, it will be presumed to be abandoned. If you know that you will not be at your home for six months or more, you should file a **Declaration of Non-abandonment*** with the county recorder to preserve the property as your homestead.

If you do not yet live in the home or on the land that you want to protect, you must file a **Declaration of Homestead.*** Also, if you own other property in which you *do* reside or have claimed a homestead in the past, you must file a **Declaration of Abandonment*** of *that* property so the creditors know which home or land you plan to protect as your homestead. *I.C. 55-1004*

*All of these **Declarations** should be filed with the County Recorder in the county where the land is located.

WARNING! The homestead exemption does NOT exempt:

- ▶ Debts secured by a mechanic’s, laborer’s, or vendor’s lien upon the homestead.
- ▶ Property that receives a lien or judgment against it *before* it qualifies as your homestead.
- ▶ Debts secured on your homestead such as Deeds of Trust, Mortgages, etc. or debts secured on property *before* it qualifies as your homestead. *I.C. 55-1005*

Can a creditor take my GOVERNMENT BENEFITS?

Government entitlements, like Social Security, Veterans, and public assistance benefits are generally exempt from garnishment but CAN be garnished for child or spousal support orders. If your bank or credit union receives a garnishment order for money in your account, they must determine if within the previous two months any exempt federal benefits have been **electronically** deposited into your account. If so, the bank must calculate the sum of all exempt benefits, and notify you. If your account contains a protected amount, the financial institution cannot freeze, or otherwise restrict your access to that amount; you must be provided the same degree of access to the account as you had before the bank received the garnishment order. Note, however, that garnishment orders from the federal government (e.g., for taxes or federally guaranteed student loans), or state child support enforcement agencies are not covered by this rule.

31 C.F.R. §§212.1 to 212.12

What happens after a judgment is issued against me?

To collect on a judgment a creditor must get a **“Writ of Execution”** which directs the Sheriff to seize a debtor’s money, property, or real estate. Usually, **the creditor must collect within five years** of the judgment or forfeit their award. However, they may renew the judgment for additional five year periods in some cases.

● When the creditor wants to take your assets or income to pay a debt, the sheriff or the bank will serve or mail you copies of the **Writ of**

Execution, a Notice of Garnishment, or a Notice if Property or Money has been seized, an Exemption List, the instructions for asserting a claim of exemption and the **Claim of Exemption Form** itself.

The Sheriff should provide Spanish translations of the notice and instructions if you need them.

Show a creditor that your funds are exempt from collection with the Claim of Exemption Form.

Fill out the Form and deliver it to the Sheriff’s office **within 14 days** of the service/delivery of the notice that property or money has been seized. If 14 days have already passed, you should fill out the Claim of Exemption Form anyway and deliver it to the sheriff. You may have to go to the court for help to recover exempt property or money after 14 days have passed.

▶ After you deliver the complete Claim of Exemption Form, the Sheriff has **one business day** to give a copy to the creditor. The creditor can accept or contest your Claim of Exemption.

▶ To contest your Claim, the creditor must file a motion to the court within **five days**. The court will then schedule a hearing to determine if your Claim is valid. You will receive a copy of the creditor’s motion, and notice of the hearing date and time. You must attend the hearing and testify or provide evidence that the property or money is exempt. *If the creditor contests your Claim of Exemption, talk to an attorney immediately.*

▶ If the creditor accepts your claim, or if they don’t file a motion to contest it within five days, the Sheriff will return the seized exempt money or property to you. You should not be responsible for any collection costs.

▶ **WARNING!** If you file a Claim of Exemption without reasonable belief and the creditor contests it, you may have to pay the creditor’s attorney fees and court costs. Likewise, if the creditor files a frivolous motion to contest your Claim and loses at court, the creditor may have to pay your attorney fees and costs.

Exemptions & their Statutory Basis

Type of Exempt Money / Property	Idaho or US Statutes
Alimony, Support, Maintenance* (Money or Personal Property)	I.C. 11-604(1)(b)
Annuity Contract Payments	I.C. 41-1836
Bodily Injury & Wrongful Death Awards*	I.C. 11-604(1)(c)
Burial Plots	I.C. 11-603(1)
Child Support Payments*	I.C. 11-604(1)(b)
Disability or Illness Benefits*	I.C. 11-604(1)(a)
Food & Water (one year's worth, for an individual and dependents, including shelving and containers).	I.C. 11-604(4)
Firearm (1) up to \$750 value	I.C. 11-605(8)
Health Aids	I.C. 11-603(2)
Homestead (<i>House, Manufactured Home, Related Structures</i>)	I.C. 55-1008
Jewelry up to \$1000 value (<i>Wedding rings, watches, etc.</i>) †	I.C. 11-605(2)
Life Insurance Benefits Payable to Spouse/Dependent*	I.C. 11-604(1)(d)
Life insurance proceeds	I.C. 41-1833
Group Insurance benefits	I.C. 41-1835
Supplemental Disability Benefits	I.C. 41-1834
Dividends, Interest, Loan Value and Cash Surrender Value of Life Insurance Contract	I.C. 11-605(9)
Medical or Hospital Benefits	I.C. 11-603(5)
Medical Savings Accounts	I.C. 11-603(5)
Military Benefits Retirement Benefits	10 U.S.C. 1440
Survivors' Benefits	10 U.S.C. 1450
Motor Vehicle (1) up to \$7000 (<i>car, truck, motorcycle</i>) †	I.C. 11-605(3)
Pensions (annuities, retirement/ disability/death benefits and/or allowances and similar rights under employee benefit plans)	I.C. 11-604A
Personal Property up to \$7500. No single item worth over \$750. †	I.C. 11-605(1)(a)-(c)
Appliances - washers, dryers, refrigerators Furniture - sofas, beds, tables Personal items - musical instruments; books; clothes; pets; family portraits and heirlooms	

Type of Exempt Money / Property	Idaho or US Statutes
Other Property (misc.)	I.C. 11-605(11)
\$800 in personal property is exempt. † <i>Example: if a single debtor owns a \$7800 car, she can use the \$7000 motor vehicle exemption + \$800 Other Property exemption to protect the car in full</i>	
Public Assistance	I.C. 11-603(4)
TAFI - Temporary Assistance to Families in Idaho AABD - Aid to Aged, Blind & Disabled County Assistance Payments	
Public Employees Benefits	I.C. 59-1317
Federal, state, local government retirement benefits	
Retirement Benefits, Pension Funds, IRAs and 401k accounts	I.C. 11-603(3) & 42 U.S.C. 1383(d)
Social Security Retirement, SSDI, SSI	42 U.S.C. § 407
Tax Credits: Federal Earned Income	I.C. 11-603(4)
Tools of Trade: Professional Books, business equipment & Implements up to \$2500 . A computer used for employment may be exempt	I.C. 11-605(3)
Unemployment Benefits	I.C. 11-603(6)
Veterans Benefits and Insurance	I.C. 11-603(3) & 38 U.S.C. 5301
Wages or Salary (<i>See chart on other side</i>)	I.C. 11-207 & 15 U.S.C. 1673(a)
Plus, up to \$1500 per year in earned, but unpaid wages	
Worker's Compensation	I.C. 72-802
* <i>IF reasonably necessary for family support AND IF not commingled with other funds.</i>	
† <i>The exemption limit can be doubled for a married couple if both persons are liable for the same debt.</i>	
Idaho Code (I.C.) sections can be found online at: http://www.legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm	

Idaho Legal Aid Services

Local Offices

Boise	345-0106
1447 S. Tyrell Lane	
Caldwell	454-2591
1104 Blaine St.	
Coeur d'Alene	667-9559
610 W Hubbard, Suite 219	
Idaho Falls	524-3660
482 Constitution Way, # 101	
Lewiston	743-1556
633 Main St., # 103	
Pocatello	233-0079
150 S. Arthur Ave., # 203	
Twin Falls	734-7024
475 Polk St., # 4	

Statewide Hotlines

Idaho Senior Legal Hotline

1-866-345-0106
(*en español* 1-866-954-2591)

Idaho Domestic Violence Legal Hotline

1-877-500-2980

Idaho Rental Assistance & Properties:

1-877-428-8844

www.housingidaho.com

Looking for more information?

Visit www.idaholegalaid.org to find more free forms and information about consumer, debt and collections issues.

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Execution & Garnishment of Judgments: Protecting Exempt Wages, Property & Benefits from Creditors

Read this handout to understand:

- **What happens when a creditor sues me to collect a debt?**
- **Can they garnish my wages?**
- **Can they take my home?**
- **Can they take my benefits?**
- **How can I protect my rights?**

If a creditor sues you over a debt and gets a judgment (a court order), they must follow a legal process to get payment from you. Some of your wages, benefits or property may be protected (exempt) from collection. However, to claim exemptions, you must follow a legal process too. This handout will help you understand **how to claim exemptions**.

The advice in this handout is very general and there might be special factors in your case. If you have legal questions, contact an attorney. If you cannot afford an attorney, contact the Idaho Legal Aid Services office nearest you using one of the phone numbers on the back of this handout. Also, visit us on the web at:

www.idaholegalaid.org