

Stopping a Florida Garnishment

Using the "Head of Family" Exemption

Introduction: If a judgment is entered against you by a court, your wages or bank account may be taken from you to pay the judgment. This is called "garnishment". BUT, if you are a "head of family" you are exempt and a garnishment can be stopped. A "head of family" is defined to be someone who provides more than one half of the support for a child or other dependent. This packet contains the forms that you will need to claim the exemption and stop a garnishment. On the last page is a copy of the law.

INSTRUCTIONS

1. Fill in the blanks on the two attached forms ("Affidavit" and "Claim of Exemption")
2. Sign both the ***in the presence of a notary public***
3. At the bottom of both documents is a "Certificate of Service". Fill in the blanks and then sign your name (this tells the court that you sent a copy to the lawyer doing the garnishment).
4. Make 2 copies of each document.
5. Mail the ***original*** of both documents to the Clerk of the Court.
6. Mail a ***copy*** of both documents to the lawyer doing the garnishment.
5. Keep the other copies for your records.

After the forms are submitted the Clerk gives notice to the party that is doing the garnishment. If the facts in the affidavit are not denied under oath within 2 business days after the delivery of the documents to that party the garnishment is stopped by the Clerk. If the facts stated in the affidavit are denied a hearing will be scheduled before the judge (the only issue at the hearing will be whether or not you are a "head of family" as claimed)

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. _____

Plaintiff

-VS-

Defendant

**CLAIM OF EXEMPTION AND
REQUEST FOR HEARING**

I claim exemptions from garnishment under the following categories as checked:

- _____ 1. Head of family wages. (You must check a. or b. below.)
 - _____ a. I provide more than one-half of the support for a child or other dependent and have net earnings of \$500 or less per week.
 - _____ b. I provide more than one-half of the support for a child or other dependent, have net earnings of more than \$500 per week, but have not agreed in writing to have my wages garnished.
- _____ 2. Social Security benefits.
- _____ 3. Supplemental Security Income benefits.
- _____ 4. Public assistance (welfare).
- _____ 5. Workers Compensation.
- _____ 6. Unemployment Compensation.
- _____ 7. Veterans benefits.
- _____ 8. Retirement or profit-sharing benefits or pension money.
- _____ 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.
- _____ 10. Disability income benefits.
- _____ 11. Prepaid College Trust Fund or Medical Savings Account.
- _____ 12. Other exemptions as provided by law.

If the Plaintiff does not file a sworn written statement that contests this Claim of Exemption within 2 business days after hand delivering of the Claim or, alternatively, 7 business days, if the Claim were served by mail, no hearing is required and the clerk must automatically dissolve the writ and notify the parties of the dissolution by mail. If the Plaintiff properly contest this Claim I request a hearing to decide the validity of my Claim. Notice of the hearing should be given to me at:

Address: _____

Telephone: _____

The statements made in this Claim and Request are true to the best of my knowledge and belief.

Signature Date: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

SUBSCRIBED AND SWORN to before me this ____ day of _____ 20__ by who is either known personally to me or who produced a valid Florida driver's license.

Notary Public
My commission expires on:

Certificate of Service

I certify that on the ____ day of _____, 20__ I mailed a copy of this Affidavit to _____ who is the attorney for the Plaintiff at the following address: _____

Signature of Defendant

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. _____

Plaintiff

-VS-

Defendant

**AFFIDAVIT OF EXEMPTION BY HEAD OF FAMILY
PURSUANT TO §222.12 FLA. STAT.**

BEFORE ME, the undersigned authority, personally appeared _____, who first being duly cautioned, deposes and says as follows:

1. My name is _____ and I live at _____
2. The funds that are being garnished in the above styled action are funds that are due me for my labor and services.
3. I am the head of my family in that I am providing more than one-half the support for my dependent(s) who is (are): _____

4. I understand that pursuant to Florida Statutes §222.11 and §222.12 that since I am the head of a family and the money being garnished is due to me for personal labor and services, that this garnishment action must cease (unless my affidavit is denied pursuant to provisions of the above cited statutes).

Signature

Address: _____

SUBSCRIBED AND SWORN to before me this ____ day _____ of 20__ by the above named person who is either known personally to me or who produced a valid Florida driver's license.

Notary Public

Certificate of Service

I certify that on the _____ day of _____, 20__ I mailed a copy of this Affidavit to _____ who is the attorney for the Plaintiff at the following address:

Signature of Defendant

Florida Statutes - Garnishment

222.11 Exemption of wages from garnishment.--

(1) As used in this section, the term:

(a) "Earnings" includes compensation paid or payable, in money of a sum certain, for personal services or labor whether denominated as wages, salary, commission, or bonus.

(b) "Disposable earnings" means that part of the earnings of any head of family remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) "Head of family" includes any natural person who is providing more than one-half of the support for a child or other dependent.

(2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to \$500 a week are exempt from attachment or garnishment.

(b) Disposable earnings of a head of a family, which are greater than \$500 a week, may not be attached or garnished unless such person has agreed otherwise in writing. In no event shall the amount attached or garnished exceed the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

(c) Disposable earnings of a person other than a head of family may not be attached or garnished in excess of the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

(3) Earnings that are exempt under subsection (2) and are credited or deposited in any financial institution are exempt from attachment or garnishment for 6 months after the earnings are received by the financial institution if the funds can be traced and properly identified as earnings. Commingling of earnings with other funds does not by itself defeat the ability of a head of family to trace earnings.

History.--s. 1, ch. 2065, 1875; RS 2008; GS 2530; RGS 3885; CGL 5792; s. 1, ch. 81-301; s. 6, ch. 85-272; s. 2, ch. 93-256.

222.12 Proceedings for exemption.--Whenever any money or other thing due for labor or services as aforesaid is attached by such process, the person to whom the same is due and owing may make oath before the officer who issued the process or before a notary public that the money attached is due for the personal labor and services of such person, and she or he is the head of a family residing in said state. When such an affidavit is made, notice of same shall be forthwith given to the party, or her or his attorney, who sued out the process, and if the facts set forth in such affidavit are not denied under oath within 2 business days after the service of said notice, the process shall be returned, and all proceedings under the same shall cease. If the facts stated in the affidavit are denied by the party who sued out the process within the time above set forth and under oath, then the matter shall be tried by the court from which the writ or process issued, in like manner as claims to property levied upon by writ of execution are tried, and the money or thing attached shall remain subject to the process until released by the judgment of the court which shall try the issue.

History.--s. 2, ch. 2065, 1875; RS 2009; GS 2531; RGS 3886; CGL 5793; s. 1201, ch. 95-147; s. 26, ch. 2000-258.