

NOTICE OF COMMENT PERIOD

The Self-Represented Litigation County Court Forms Committee submitted to the Nebraska Supreme Court proposed changes to the Notice to Judgement Debtor form, CC 3:8B, and recommended a new Request for Hearing on Garnishment form. The Nebraska Supreme Court determined the forms should be posted for a public comment period.

The Nebraska Supreme Court invites interested persons to comment on the proposed changes and new form. Anyone desiring to comment on these proposed changes and new form should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to wendy.wussow@nebraska.gov no later than May 31, 2019.

The full text of the proposed changes and new form is available below, or a hard copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

REQUIRED

CC 3:8B Rev. 06/15 xx/xx

Neb. Rev. Stat. § 25-1011

NOTICE TO JUDGMENT DEBTOR

IN THE _____ COURT OF _____ COUNTY, NEBRASKA

Case No. _____

Judgment Debtor

NOTICE TO JUDGMENT DEBTOR

The enclosed summons and order of garnishment has been issued by this court at the request of the person who has a judgment against you in the above case. That person is called the judgment creditor. A garnishment is a method of collecting money from you by withholding funds due you by your employer, your bank, or some other third person holding your funds. This notice informs you of your rights as a judgment debtor, ~~of the rights you have.~~

Certain money, funds, or income are exempt from garnishment (cannot be taken) but you must claim the property as exempt. **If you believe your wages or bank account funds are exempt from garnishment, you must act quickly or you may lose your right to claim the exemption, and your money, funds, or income may be used to pay the judgment creditor. You must file a claim of exemptions and request for hearing with the court within 3 business days of receiving this notice.** A form to request a hearing on the garnishment is provided with this notice.

1. **Wages:** Wages are exempt up to a certain level and the amount that can be garnished varies depending on whether or not you are the head of a family. Head of a family means an individual who actually supports and maintains one or more individuals who are closely connected to him or her by blood relationship, by relationship by marriage, by adoption, or by guardianship, and whose right to exercise family control and provide for the dependent individual(s) is based upon some moral or legal obligation. Neb. Rev. Stat. § 25-1558.

a. If you are the head of a family, a judgment creditor can garnish up to 15% of your disposable wages. If you are not the head of a family, a judgment creditor can garnish up to 25% of your disposable wages. If you believe your status as "not the head of a family" is incorrect, you may request a hearing.

4.2. **Bank accounts and other financial institutions:** Some bank account funds are exempt from garnishment if they are from certain government benefits and other sources.

a. If ~~your bank account cannot be garnished by a creditor if your bank account consists solely of~~ direct deposited funds from the federal government such as Social Security, SSI, Veterans',

Black Lung and/or Railroad Retirement benefits- and you have less than 2 months' worth of benefits in your account, then you do not need to request a hearing unless the bank or credit union froze your account. If the garnishment is based on a judgment for support of a person, such as child support or alimony, federal exemptions may not apply. Bank accounts that mingle federal benefits and other money may be subject to garnishment. Contact and confirm with your bank that your funds are exempt. You do not need to request a hearing unless the bank or credit union froze your account. **UPON RECEIVING THIS NOTICE CONTACT YOUR BANK OR FINANCIAL INSTITUTION IMMEDIATELY TO SEE WHETHER THERE IS A HOLD ON THE FUNDS IN YOUR ACCOUNT.**

- b. If you are claiming that your bank account funds are exempt as personal property under Neb. Rev. Stat. § 25-1552, you must file a list of all the property you own, including all of your bank accounts, and the value of each item listed. In addition, you must indicate which items you claim to be exempt. Under Neb. Rev. Stat. § 25-1552(1), each natural person residing in this state shall have exempt from forced sale on execution the sum of five thousand dollars (\$5,000) in personal property, except wages.
- ~~2.~~ Wages are exempt up to a certain level and the amount that can be garnished varies depending on whether or not you are the head of a family.
- ~~3.~~ Please note these exemptions may not apply to judgments for child support, alimony, spousal support, and certain debts owed to the government such as taxes.
- ~~3.~~~~4.~~ If the person holding your funds or wages says they owe you money or will owe you money within the next 60 days, and if the judgment creditor makes application, the court will order the person who is holding your money to keep withholding funds for the next 90 days. This is called "continuing lien". The lien can be extended for a second 90 days by the judgment creditor.
- ~~4.~~~~5.~~ If you believe the court should not allow a garnishment either because the funds sought are exempt or because you do not owe the amount on the judgment, you are entitled to a hearing to determine those issues. However, the original judgment will not be reopened, set aside or the case tried again.
- ~~5.~~~~6.~~ If you wish a hearing, you must complete the request for hearing on garnishment form ~~below~~ provided with this notice and file it with the court **within 3 business days** of receiving this notice.
- ~~6.~~~~7.~~ If you request a hearing, the court will set a hearing date. That hearing date will be set within 10 days after the court receives your request. The court will notify you of the hearing date and time. **You must attend the hearing.** At the hearing, you must prove your right to an exemption. You should bring to the hearing any documents or other evidence supporting your claim.
- ~~8.~~ **If you think you are entitled to an exemption, it may be helpful for you to you speak with an attorney right away. If you need the name of an attorney, you can contact the local bar association. If you cannot afford an attorney, you may want to contact a free legal services provider such as Legal Aid of Nebraska. Information about legal resources and information may be found at online at <https://supremecourt.nebraska.gov/self-help/legal-resources-information>.**

IF YOU HAVE ANY QUESTIONS ABOUT THIS PROCEDURE, YOU SHOULD CONTACT YOUR ATTORNEY.

REQUEST FOR HEARING — Case No. _____

I request a hearing on this garnishment proceeding as I believe that (check all applicable boxes):

(1) the funds asked for are exempt from garnishment,

(2) because I do not owe the amount of the judgment,

(3) my status as "not the head of a family" is incorrect.

I understand that the judgment against me will not be set aside or the case reopened or tried again.

Date

Signature

Name

Street Address/P.O. Box

Bar Number and Firm Name (attorneys only)

City/State/ZIP Code

1 copy to the judgment debtor 1 copy to the garnishee
(Information only) Phone

E-mail Address

Do not return this request to the court unless you want a court hearing

REQUIRED

CC 3:8N NEW xx/xx

Neb. Rev. Stat. § 25-1011

**REQUEST FOR HEARING
ON GARNISHMENT**

IN THE COURT OF COUNTY, NEBRASKA

Case No. _____

Judgment Debtor

REQUEST FOR HEARING ON GARNISHMENT

I, _____, of lawful age, state that I am the Judgment Debtor in the above-entitled action in which a judgment has been rendered against me, and that a garnishment in aid of execution has been issued.

I request a hearing on this garnishment proceeding because (check all applicable boxes):

I DON'T OWE THE AMOUNT OF THE JUDGMENT

I understand that the judgment against me will not be set aside or the case reopened or tried again.

I AM THE HEAD OF A FAMILY. I state that I am the head of a family (contribute substantial support to my spouse, child(ren), and/or dependent(s) and under the laws of the State of Nebraska a creditor is only allowed to garnish 15% of my disposable earnings. My status, listed by the judgment creditor as "not the head of a family", is incorrect. As the head of a family, I request the judgment creditor be allowed to garnish 15% of my disposable earnings, as provided by statute.

Note: If you are the head of a family, more than 15% of disposable earnings can be garnished for child support and other types of non-consumer debt. If you are not the head of a family, a judgment creditor can garnish up to 25% of your disposable earnings, as provided by statute.

MY FUNDS ARE EXEMPT:

(a) The funds in my bank account are exempt from garnishment. I further state that the sum of \$ _____ in my account at _____ consists of the following exempt funds:

- | | |
|--|---|
| <input type="checkbox"/> <u>Social Security Benefits</u> | <input type="checkbox"/> <u>Unemployment Compensation</u> |
| <input type="checkbox"/> <u>Veteran Benefits</u> | <input type="checkbox"/> <u>Earned Income Tax Credit (EITC)</u> |
| <input type="checkbox"/> <u>Public Assistance Benefits</u> | <input type="checkbox"/> <u>Student Loans/Student Financial Aid</u> |
| <input type="checkbox"/> <u>Disability</u> | <input type="checkbox"/> <u>Other</u> |

- (b) I am claiming the funds in my bank account are exempt under Neb. Rev. Stat. § 25-1552, which provides an exemption of property of any kind not to exceed five thousand dollars (\$5,000) in the aggregate. The inventory of all of the property I own, the property's fair market value, and if I am claiming that property to be exempt is below (and on additional pages if necessary).

INVENTORY:

<u>ITEM OF PROPERTY</u>	<u>FAIR MARKET VALUE</u>	<u>CHECK IF CLAIMED AS EXEMPT</u>

_____ Date _____

_____ Signature _____

_____ Name _____

_____ Street Address/P.O. Box _____

_____ Bar Number and Firm Name (attorneys only) _____

_____ City/State/ZIP Code _____

_____ Phone _____

_____ E-mail address _____

If you want a court hearing, you must complete this form and file it with the court within 3 business days of receiving the notice to judgment debtor.

Do not return this request to the court unless you want a court hearing.