

## GARNISHMENT UPDATE

The Minnesota state legislature made a number of modifications to the garnishment section of the Minnesota Statutes. The legislature intended to make the garnishment process easier and more understandable for the creditor, debtor, and garnishee. In doing so, several changes were made to the statutory “forms” and the garnishment process.

### NEW NOTICE & “FORM” REQUIREMENTS

The new statutes revise the garnishment “forms” requiring that the creditor provide “plain language” notice and instructions to the debtor. The notice must include:

1. The current balance in the account;
2. The amount that has been frozen;
3. For how long the funds are frozen;
4. That some of the funds may be exempt; and
5. Instruct the debtor about how to claim exemptions, how to seek legal assistance, the timelines to respond, and consequences for failing to do so.

The “forms” also remove outdated programs providing assistance based on need, replacing them with existing programs, and clarify that the exemption for assistance based on need is not limited to the programs listed in the exemption form.

### NEW REQUIREMENT FOR MAKING EXEMPTION CLAIMS

When a debtor claims an exemption, a new burden is imposed on the debtor to provide the creditor with the debtor’s bank statements for the previous sixty (60) days. If the debtor claims an exemption and submits appropriate bank statements, the burden then shifts to the creditor to object to the exemption claim. However, the failure of the debtor to provide the required bank statements does not invalidate the exemption claim.

### EXEMPTION “PING-PONG”

Previously, if the debtor claimed an exemption, the creditor had the opportunity to object, after which the burden rested on the debtor to request a Court hearing. Under the new amendments, the burden shifts to the creditor. If the debtor claims an exemption and submits appropriate bank statements, the creditor must serve by mail a “Notice of Objection and Notice of Hearing” within six (6) business days of receiving the exemption and schedule a hearing with the Court. There is then an expedited hearing process and the Court will hear the exemption dispute within five (5) and seven (7) work days after delivery of the “Notice of Objection and Notice of Hearing”.

### PRE-JUDGMENT GARNISHMENT CHANGES

Prior to the most recent amendments, if the debtor failed to answer a Complaint, the debtor’s funds could be garnished 40 days after personal service. The new amendments require that if the debtor has not answered after 45 days, a creditor must take a second step to personally serve the debtor with a “Notice of Intent to Garnish” and an “Exemption Notice” if creditor wishes to garnish prior to entry of judgment. The “Notice of Intent to Garnish” is designed to give the debtor a second notice of the impending garnishment and to encourage the debtor to answer the Complaint or contact the creditor.

### **JOINT ACCOUNT ISSUES REMAIN**

Unfortunately, the amendments to the garnishment statutes did not clarify the issue of garnishing joint accounts. In *Enright v. Lehman*, the Minnesota Supreme Court considered whether a judgment creditor could garnish funds held in joint accounts that were not contributed by the debtor. The Court found that the Minnesota Multiparty Accounts Act protects funds in the joint account “in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.” Thus, only the funds in the account belonging to the judgment debtor are subject to garnishment. A lingering issue remains: Who bears the burden to prove ownership of the respective funds? Fortunately, the garnishee-bank has no obligation to determine ownership. That battle is left for the creditor and debtor to decide.