



LEGAL
SERVICES

INCORPORATED

My Bank Account Is Frozen. What Do I Do?

HOW DID THIS HAPPEN?

If your bank account is frozen, that means someone (a plaintiff) has filed a case against you for an unpaid debt and won a judgment against you. You should have received a notice that the account will be or has been frozen and that certain funds are exempt from collection.

WHAT ARE MY OPTIONS?

There are two ways to release your account.

- (A) If your income is exempt by law from collection, **you can deal directly with the plaintiff's attorney.** This is the person who restrained your account. He or she is required to release your account if you provide proof of your exempt income. Look at the list below to help determine if your income is exempt from collection. If you are not sure, consult a social worker or attorney.
- (B) The second option is to **file an Order to Show Cause to Vacate the Judgment.** This option is available to anyone, regardless of his or her source of income. Even if all your income is exempt and the plaintiff's attorney agrees to release your account, it is a good idea to file an Order to Show Cause to Vacate a Judgment. Without a valid judgment, plaintiff's attorney cannot freeze your account again.

WHAT TYPES OF DEPOSITS ARE EXEMPT FROM COLLECTION?

Below is a partial list of deposits that generally are exempt from collection or garnishment:

- Veterans Benefits (including Survivor's Benefits)
- Wages of SSI and public assistance recipients
- Public or Private Pensions
- Social Security Disability Benefits (SSD)
- Unemployment Benefits
- Supplemental Security Income (SSI)
- Public School Teacher Benefits
- 90% of your wages earned with the past 60 days
- Public Assistance
- Workers Compensation Benefits
- Social Security Benefits
- Child Support
- Maintenance (Alimony)
- Railroad Retirement Benefits
- Some Insurance Benefits
- Life Insurance Policy

Note: There are exceptions to the general rule that the above benefits are exempt from garnishment: some exempt funds may be garnished for purposes of paying child support or federal debts, including student loans. If you owe these kinds of debts, you should contact an attorney to find out how these debts may affect your benefits.

OPTION A: CONTACT PLAINTIFF'S ATTORNEY

This option is available only to individuals who have **exempt** income in their bank account.

WHAT DO I NEED TO SEND TO PLAINTIFF'S ATTORNEY TO RELEASE MY ACCOUNT?

1. Call your bank. Ask your bank for the name of the case, the name and **phone number** of the attorneys representing the other side in your case, and the **index number** of the case.
2. Gather the last three months of your bank statements. If you don't have them, call or go to the bank and ask them for a printout of your account activity for the last three months.

3. Review the bank statements or account activity print-out. Look at all of the deposits. Make sure the deposits are from exempt sources.
4. Call the attorney's office. Get the name and telephone number of the person you are speaking with and then tell the person:
 - a. "My bank account was frozen by you."
 - b. "All of the money in the account is exempt under the law so you will have to release my account."
 - c. "Please give me your fax number so that I can fax you proof that all of the money is exempt."
5. Send a fax to the number given to you with the following information:
 - a. Your name
 - b. The name and index number of the case
 - c. The name of the person you spoke with
 - d. A statement that says "Here is proof that all of the funds in my account are exempt. The law requires that you release my account IMMEDIATELY. If you do not, I may be forced to take legal action against you. Please send me a copy of the release that you will send to my bank."

WHAT ARE THE PROS AND CONS OF DEALING DIRECTLY WITH THE ATTORNEY WHO FROZE MY ACCOUNT?

Pros:

- 1) You don't have to go to court and litigate the case, which can be time-consuming.

Cons:

- 1) The creditor still has a judgment against you. He or she can still freeze your bank account to collect funds that are not exempt. If this happens, you will have to vacate the judgment or send another letter notifying him or her that your funds are exempt.
- 2) The judgment may appear on your credit report.
- 3) If your exempt income is mixed in with non-exempt income, you may have a more difficult time getting the attorney for the plaintiff to release your account.

OPTION B: VACATE THE JUDGMENT

HOW DO I VACATE A JUDGMENT?

You have to file a written request to vacate the judgment with the court that entered the judgment. This request is called an "**Order to Show Cause to Vacate the Judgment.**" The most common bases for vacating a judgment are:

- **Excusable Default:** This requires a reasonable excuse for why you did not appear and a meritorious defense to the complaint. You must move to vacate the judgment within one year after service of the judgment or order with written notice of its entry.
- **Lack of Jurisdiction:** You may vacate a judgment if the court lacked power (or jurisdiction) over you. You can assert this basis if you were not properly served or if you were never served with the summons and complaint. There is no time limit for vacating a judgment on this ground.
- **Fraud, Misrepresentation, or Other Misconduct:** This would be appropriate where, for example, you received a complaint, you called plaintiff's counsel and set up payment agreement, plaintiff's counsel told you that you need not worry about going to court, but then plaintiff filed for and won default judgment against you. This ground has no time limitation.

WHAT DO I NEED TO VACATE A JUDGMENT?

If you decide to follow this route, you need to:

- 1) Get **index number** of case. Look for it in the letter from the bank stating the account's been frozen, or call the bank to get contact info for opposing counsel, who will have the index number.
- 2) Go to the court and **ask for the file** with your index number. **Copy the file**, including the affidavit of service. Review the file to figure out what grounds you have to vacate the judgment. For example, the affidavit of service may state an incorrect address for you or service on an individual you don't know.

WHAT PAPERS AM I REQUIRED TO FILE TO VACATE A JUDGMENT?

Papers to be filed include:

- The **Order to Show Cause ("OSC") form** – The OSC form is available from the court clerk. An OSC demands that the plaintiff show cause why the judgment should not be vacated and the case restored to the court calendar. On the form, list the reasons why the judgment should be vacated and request that your bank account be released and any funds be restored to you.
- **Affidavit in Support form** – You should fill out a blank Affidavit in Support with facts supporting your OSC. Blank Affidavit in Support forms are available from the court clerk.
- **Exhibits** - The exhibits usually include:
 - The complaint
 - The affidavit of service
 - Some proof showing your address is different from the place where the papers were served, if so.
 - The judgment.
 - The letter from the bank stating that the account is frozen (please remember to redact the bank account number and the social security number if it appears anywhere.)

WHAT HAPPENS AFTER I FILE THE PAPERWORK?

When you file your OSC, the court clerk will write down a date for the OSC hearing and instruct you how to send your paperwork to plaintiff's attorney. **Follow the clerk's instructions** on how to send the OSC and any affidavit and exhibits to the plaintiff's attorney. Keep proof that you sent the paperwork, either by a return receipt of certified mail or a certificate of mailing. You must appear in court on time on the date of your OSC hearing.

At the hearing, if the judge grants your Order to Show Cause, he or she will issue a Decision/Order that vacates the judgment and restores the case to the calendar. This means the case is now open and you must file an answer to the complaint within 20 days of the Decision/Order. The Decision/Order should also direct that your accounts be released and any money be returned to you.

WHAT ARE THE PROS AND CONS OF VACATING A JUDGMENT?

Pros:

- 1) No fear the account will be re-restrained unless and until a judgment is entered again.
- 2) If monies have been executed upon, a vacatur requires the plaintiff to return those funds. Make sure the judge adds that requirement to the Decision/Order.
- 3) Judges seem to be willing to do it if you take the time to file an OSC. Bad service is no secret.

Cons:

- 1) Takes a long time – a couple of weeks at least from when you take the papers to court.
- 2) You have to litigate the case so that another default is not entered. This means you have to file an answer within 20 days of the order vacating the judgment and show up at every court date.
- 3) If you have exempt income and a judgment is eventually entered you have to notify plaintiff and plaintiff's attorneys about exempt funds in bank account anyway.