

Frozen Bank Accounts:

Your Rights under the Exempt Income Protection Act

The **Exempt Income Protection Act** (EIPA) (NY CPLR § 5222-a) protects government benefits, pensions, and some earned income, by limiting when bank and credit union accounts can be frozen by a judgment creditor.

Private creditors and debt collectors **cannot** freeze your account to pay certain court judgments* (and your bank or credit union cannot charge a restraining fee) if the balance in your account is less than:

- \$2,750** and your account contains exempt funds that were directly deposited within the past 45 days including:
 - Social Security
 - Supplemental Security Income (SSI)
 - Social Security Disability (SSD)
 - spousal support/maintenance, child support
 - veterans administration benefits (VA)
 - public assistance (PA)
 - 401(k), 403(b), individual retirement accounts
 - workers' compensation
 - unemployment insurance
 - public or private pensions
 - railroad retirement
 - black lung benefits
 - college tuition trust funds
 - life insurance

OR

- \$2,160, for all other accounts.

* EIPA does not apply if the creditor is the State or City of New York (or other municipality) or their agencies, or if the debt is for child support, spousal support, or alimony.

** People who receive certain federal benefits might qualify for greater protection under a federal rule governing bank account restraints. See "Resources" on page 2 for more information.

If your account is at risk of being frozen because a judgment was entered against you:

- ⇒ If possible, make sure all exempt income you receive is *directly deposited* into your account.
- ⇒ Do not mix exempt income with non-exempt income.
- ⇒ Remember that your account cannot be frozen if the balance is under \$2,750/\$2,160 (whichever applies).

What to do if your account is frozen:

1. If your account is frozen because it contains more than \$2,750/\$2,160, you have the right to access \$2,750/\$2,160 right away. Go to your bank branch or credit union and ask it release this amount to you from your account. You may have to withdraw it in cash.
2. Your bank or credit union should mail you two Exemption Claim Forms (a form you can return to release additional exempt funds). Keep a copy of the envelope. If you do not get them, ask your bank or credit union for them.
3. If all the funds in your account are exempt, within **20 days** of the postmark on the envelope, fill out and mail the two Exemption Claim Forms to request that these exempt funds be released. Be sure to include copies of documents that support your exemption claim.

NOTE: supporting documents may include your benefits award letter, recent paystubs and bank statements.

NOTE: 90% of income earned within the last 60 days is also exempt from debt collection. If your account is frozen, and all the money in it is from recent paychecks, most of that money may be exempt. Check off the 90% earned income exemption on the Exemption Claim Form.

3. The bank or credit union must release your account in 8 days unless the creditor files an objection with the Court.
4. If your account is frozen, it is most likely because there is a court judgment against you. Even if your bank account is released, you should immediately go to CLARO or call a legal hotline for help with trying to vacate the judgment if you did not know there was one against you..

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SELF-HELP GUIDE:

What to do when your bank/credit union doesn't comply with EIPA

Do banks and credit unions always comply with EIPA?

Unfortunately, some bank employees don't know their legal obligations. Some common problems are:

- The bank improperly freezes your account even though the balance is below \$2,750/\$2,160.
- The bank properly freezes your account but refuses to let you access \$2,750/\$2,160.
- Your bank fails to send you the Exemption Claim Forms.
- Your bank makes you contact the creditor's attorney to release your account even when it should not be frozen.
- Your bank charges you a fee even though it improperly froze your account.

Tips for regaining access to your exempt funds:

1. Keep a detailed record of all of your contacts with the bank or credit union, including dates, names and what they told you.
2. Show this fact sheet, as well as the NYS Department of Financial Services Industry Letter, *** to the bank or credit union branch employees.
3. Ask to speak to a bank branch or credit union manager.
4. Try accessing the funds at a different branch. For example, if your usual branch is in the Bronx, try going to a branch in midtown Manhattan.
5. Call the bank or credit union's customer service number and ask for the Levies or Legal Processing Department.
6. Call a legal hotline or go to CLARO for help, *especially before contacting the creditor's attorney.*
7. File complaints with the government (see Resources).

*** The Industry Letter is available at <http://www.dfs.ny.gov/legal/industry/il090120.htm> (but note that the amounts listed in the letter have increased to \$2,750 and \$2,160).

Tips for speaking with bank or credit union employees:

You: I would like to access \$2,750/\$2,160 from my account.

Bank: What do you mean?

You: I have a right to this money under the Exempt Income Protection Act. This fact sheet explains my legal rights.

Bank: I don't know what you're talking about.

You: In that case, I would like to speak with a branch manager or supervisor.

Bank: You have to contact the creditor's attorney or fill out an Exemption Claim Form first.

You: The bank has to follow the Exempt Income Protection Act and give me access to my money. I don't have to call the creditor's attorney or complete any forms to gain access to the protected amount (\$2,750/\$2,160) under the law.

Bank: There is nothing else I can do.

You: What is the phone number for the bank's Levies or Legal Processing Department?

NOTE: If your bank continues to deny you access to your funds, go to CLARO or call a legal hotline (see Resources).

Resources:

For free legal advice, information, and assistance:

- ◇ **NYC Financial Justice Hotline:** 212-925-4929 (T-Th, 12-2)
- ◇ **MFY Legal Services Consumer Hotline:** 212-417-3881 (Th, 10-2)
- ◇ **NYS Department of Financial Services Consumer Hotline:** 800-342-3736 (M-F, 8:30-4:30)
- ◇ **CLARO:** claronyc.org
- ◇ **Lawhelp:** lawhelpny.org/issues/consumer

To file complaints:

- ◇ **NYS Department of Financial Services:** 800-342-3736, dfs.ny.gov/consumer/fileacomplaint.htm
- ◇ **Consumer Financial Protection Bureau:** 855-411-CFPB (2372), consumerfinance.gov/complaint/#bank-account