

## **EXEMPTIONS IN COLLECTION ACTIONS IN WISCONSIN**

The federal government and each state have statutes that protect and preserve certain types of a debtor's property and assets from creditor collection actions. Such creditor collection actions include garnishment, execution, assignment, or attachment. Property that is excluded from the creditor's collection action is considered "exempt."

### **CLAIMING AN EXEMPTION**

Whether or not property is exempt depends on the debtor's circumstances, such as his or her marital status and number of dependents, and circumstances surrounding the debt, such as how the debt occurred and if there is a mortgage or a security interest in the property. For help in determining if property is exempt, contact a lawyer. Call the Wisconsin State Bar's Lawyer Referral and Information Service [(800) 362-9082] to find an area lawyer who handles cases like yours.

To claim an exemption, the debtor must inform the creditor, or creditor's agent or attorney, of the specific property in which the debtor takes an exemption. The request for exemption must be made prior to the disposition of the property by sale or by court order. The request can be made orally or in writing. Since no record may be made of a telephone call, be sure to call and write. Keep a copy of your written claim for your records. Also, keep a written record of persons contacted, the date and time of contact, and what was said.

Standard court forms on which to claim an exemption can be found online at [www.wicourts.gov](http://www.wicourts.gov) or obtained from the Clerk of Court (for earnings garnishment, see form CV-424 Earnings Garnishment – Debtor's Answer; for non-earnings garnishment, see form CV-303 Non-Earnings Garnishment Debtor's Answer or form SC-303 Small Claims Non-Earnings Garnishment Debtor's Answer).

### **ASSETS THAT MAY BE EXEMPT**

*Definitions of terms used in explaining the outlined exemptions:*

- "Aggregate value" means the total sum of equity in the items.
- "Equity" is the fair market value minus any valid lien on the property.
- "Fair market value" is the price at which the item could be sold for today in its present condition.

*Note about Marital Property:* Each partner to a marriage has the right to a full set of exemptions. For example, each individual in the marriage has a \$12,000 exemption for consumer goods, so together they have a \$24,000 exemption.

*This is not a complete list of exemptions. For specific answers, please contact a lawyer.*

#### **Burial Plots – Wisconsin Statute § 815.18(3)(a)**

Cemetery lots, aboveground burial facilities, burial monuments, tombstones, coffins, or other articles for the burial of the dead owned by the debtor and intended for the burial of the debtor or the debtor's family.

#### **Business and Farm Property – Wisconsin Statute § 815.18(3)(b)**

Equipment, inventory, farm products, and professional books used in the business of the debtor or the business of a dependent of the debtor, not to exceed \$15,00 in aggregate value.

**College Savings Account – Wisconsin Statutes §§ 815.18(3)(p) and 14.64(7)**

An interest in a state-sponsored 529 college savings plan administered by the Wisconsin Office of the State Treasurer. A beneficiary's right to qualified withdrawals under this section is not subject to garnishment, attachment, execution or other process of law.

**Consumer Goods – Wisconsin Statute § 815.18(3)(d)**

Household goods, furnishings, wearing apparel, keepsakes, jewelry and other articles of personal adornment, appliances, books, musical instruments, firearms, sporting goods, animals, and other tangible personal property held primarily for the personal, family, or household use of the debtor or dependent of the debtor, not to exceed \$12,000 in aggregate value. Note that "other tangible personal property" does not include cash or its equivalent. See also "Motor Vehicles" below.

**Crime Victim Awards – Wisconsin Statute § 949.07**

Crime victim awards made pursuant to Wisconsin Statutes Chapter 949.

**Depository Accounts – Wisconsin Statute § 815.18(3)(k)**

Personal depository accounts in the aggregate value of \$5,000. A depository account means a certificate of deposit, demand, negotiated order of withdrawal, savings, share, time or like account maintained with a bank, credit union, insurance company, savings bank, savings and loan association, securities broker or dealer, or like organization. It does not include a safe deposit box or property deposited in a safe deposit box.

**Fire and Casualty Insurance – Wisconsin Statute § 815.18(3)(e)**

For a period of 2 years after the date of receipt, insurance proceeds on exempt property payable to and received by the debtor, if the exempt property has been destroyed or damaged by fire or casualty of any nature.

**Fire and Police Pension Fund – Wisconsin Statute § 815.18(3)(ef)**

All money paid or ordered to be paid to a member of any fire or police department or the surviving spouse or guardian of the minor child(ren) of a deceased or retired member as a pension on account of the service of the member in any city in the state whose population exceeds 100,000.

**Homestead – Wisconsin Statute § 815.20**

The limit of the homestead exemption is \$75,000 per individual. Each spouse may claim an exemption. An exempt homestead means a dwelling, including a building, condominium, mobile home, house trailer, or cooperative, and so much of the land surrounding it as is reasonably necessary for its use as a home, but not less than 0.25 acre, if available, and not exceeding 40 acres.

**Life Insurance or Annuity Contracts – Wisconsin Statute § 815.18(3)(f)**

Any unmaturing life insurance or annuity contract owned by the debtor and insuring the debtor, the debtor's dependent, or an individual of whom the debtor is a dependent, other than a credit life insurance contract. The debtor's aggregate interest cannot exceed \$150,000 in value, or \$4,000 if the contract was issued and funded less than 24 months before the execution order or exemption claim, in any accrued dividends, interest, or loan value of all unmaturing life insurance or annuity contracts owned by the debtor, the debtor's dependent, or an individual of whom the debtor is a dependent.

**Motor Vehicles – Wisconsin Statute § 815.18(3)(g)**

Motor vehicles not to exceed \$4,000 in aggregate value. Any unused amount of the aggregate value from the consumer goods category may be added to this exemption to increase the aggregate exempt value of motor vehicles. This means that if the debtor does not use all of the \$12,000 exemption allowed for consumer goods, the remaining amount can be used for application to this motor vehicles exemption.

**Partnership Property – Wisconsin Statute § 178.21(3)(c)**

A partner's right in specific partnership property is exempt from attachment or execution, except on a claim against the partnership.

**Personal Injury, Wrongful Death, and Life Insurance Claims – Wisconsin Statute § 815.18(3)(i)**

A payment not to exceed \$50,000 resulting from personal bodily injury, including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent. Wrongful death and life insurance payments on the life of an individual to whom the debtor is a dependent to the extent reasonably necessary for the support of the debtor and the debtor's dependents. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent in an amount reasonably necessary for the support of the debtor and the debtor's dependents. Any property traceable to these payments is exempt.

**Public Benefits – Wisconsin Statute § 49.96**

All Wisconsin Works (W-2), Kinship Care, county cash assistance, and state Supplemental Security Income (SSI) payments.

**Public Employee Trust Funds – Wisconsin Statute § 40.08(1)**

Benefits paid pursuant to Wisconsin Statutes Chapter 40.

**Retirement Benefits – Wisconsin Statute § 815.18(3)(j)**

Retirement benefits (i.e. pensions, disability benefits, profit sharing plans, individual retirement accounts, 401-K plans) are exempt completely if they comply with the provisions of the Internal Revenue Code. However, "owner-dominated plans" of "owner-employees" are exempt only to the extent reasonably necessary for the support of the debtor and the debtor's dependents. See Wisconsin Statutes §§ 62.63(4), 815.18(13)(h), and 815.18(13)(hm) for information about city and county retirement benefits.

**Social Security Benefits – Wisconsin Statute § 815.18(3)(ds) and 42 U.S.C. 407**

All moneys received, receivable, or held in a depository account by a person as federal insurance benefits under 42 U.S.C. 401 to 433, including Social Security, Social Security Disability Insurance (SSDI), and Supplemental Security Income (SSI).

**Support Payments – Wisconsin Statute § 815.18(3)(c)**

Alimony, child support, family support, maintenance, or separate maintenance payments to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

**Unemployment Insurance – Wisconsin Statute § 108.13**

Unemployment benefits are not assignable to a creditor before payment. A creditor may be able to make a claim on the benefit funds once the benefit is received.

**Veteran Benefits – Wisconsin Statutes §§ 815.18(3)(n) and 45.03(8)(b)**

All money received by a person as a pension, compensation, or insurance benefit from the U.S. government on account of military or naval service and all benefits and aid provided by the Wisconsin Department of Veterans Affairs.

**Wages and Net Income – Wisconsin Statutes §§ 815.18(3)(h), 425.106(1)(a) and 812.34(2)(a)**

In an earnings garnishment action, all wages are protected if the debtor's household income is below the poverty line, if the debtor received or has been determined eligible for need-based public assistance (i.e. FoodShare, Medicaid) within six months of the garnishment, or if at least 25% of the debtor's disposable earnings are assigned by court order for support. If the garnishment of 20% of the debtor's disposable earnings would result in the debtor's household income being below the poverty line, the amount of the garnishment is limited to the debtor's household income in excess of the poverty line before the garnishment is in effect. If none of these exemptions apply, 80% of the debtor's disposable earnings is still exempt from wage garnishment.

If the debtor is self-employed, an independent contractor, or otherwise has income from someone other than an employer, 75% of the debtor's net income (gross income minus federal and state tax deductions) for each one-week pay period is exempt. The exemption is limited to the extent reasonably necessary for the support of the debtor and the debtor's dependents but to not less than 30 times the greater of the state or federal minimum wage.

For definitions of terms and information on how to calculate these exemptions, see the standard court forms discussed under "Claiming an Exemption."

**Worker's Compensation – Wisconsin Statute § 102.27(1)**

Any claims for worker's compensation, compensation awarded, or paid, cannot be taken for the debts of the consumer.

The above is intended to provide general information only and is not a substitute for thorough and specific advice on an individual case. Depending on the complexity of your legal problem, you may need to consult an attorney for advice or representation.

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