

FAMILY LAW JUDGMENT



COLLECT YOUR FAMILY LAW MONEY JUDGMENT



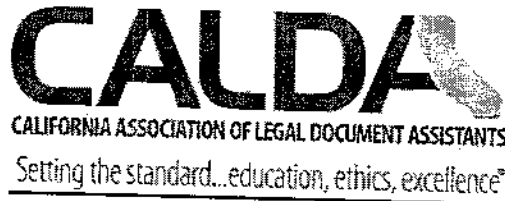
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This guide will help you understand the process available under California law to collect a family law judgment. We have tried to answer many of the most frequently asked questions about the process and address the available procedures in California.

The following information was derived from the Judicial Branch of California, California Courts On-Line Self-Help Center

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You have to collect your family law money judgment from your former spouse or domestic partner (the debtor) yourself. The court will NOT do it for you. You can start collecting your judgment right away as long as:

1. The judgment has been entered. You can check the court records to confirm that the judgment has been entered, and
2. There is no stay (suspension or postponement) on enforcement of the order due to an appeal, a stay from a bankruptcy case or other legal action.

Here are some initial steps you can take:

- Give your former spouse or domestic partner an address where he or she can mail the payment. You can offer to accept less than the whole judgment if your former spouse/partner pays right away. Or you can agree to take regular payments. But if you agree to accept less than the whole judgment you will give up your right to the rest of the money.
- If your former spouse or domestic partner does not pay you by the date the court ordered write him or her a letter and include a copy of the court order. Remind your former spouse/partner that he or she owes you money and that you may have to take more serious steps if the debt is not paid voluntarily.
- Talk to a lawyer. If your former spouse or partner will not pay it can be complicated, expensive and take a lot of time to collect your money.

Do not use illegal ways to collect your money

The person who owes you money (your former spouse/partner — the debtor) may be protected from abusive or unfair ways to collect the debt and, generally, it is not a good idea for you to use

unfair or deceitful tactics to get the money the owed you. In your efforts to collect the debt, you should NOT:

- Lie or make misleading statements to collect the debt
- Harass the debtor
- Ask another person for more than basic information about where the debtor is
- Tell the debtor's employer or other people that the debtor owes you money (except when you get an earnings withholding order from the court)
- Get in touch with the debtor before 8:00 a.m. or after 9:00 p.m. or at any time or place that is not convenient

Getting Your Former Spouse or Domestic Partner to Pay You Voluntarily:

There are several ways you can encourage your former spouse/partner (the debtor) to pay you voluntarily. You can:

- Write a letter
- Help the debtor find assets to pay the judgment
- Be flexible about payment terms
- Accept installment payments

Write a letter

Write a letter to show your former spouse/partner that it is in his or her best interest to pay the judgment as soon as possible. In your letter, you can say that if your former spouse/partner does not pay:

- The amount he or she owes will increase daily since the judgment accumulates interest at the rate of 10% per year.
- You can seek reimbursement from your former spouse/partner of any reasonable and necessary costs of collection.
- Credit reporting agencies will know he or she has not paid the judgment because his or her name will appear on the court's "Judgment Roll."
- If he or she does not pay you can ask for:
 - A wage garnishment (also called a "wage assignment") against the debtor and maybe the debtor's new spouse or new domestic partner
 - A levy on the debtor's bank account
 - Liens on real property (like a house or land) or personal property

Help the debtor find assets to pay the judgment

Sometimes debtors honestly believe they do not have any way to pay this debt. Encourage your former spouse/partner to consider sources of assets such as:

- Using an income tax refund
- Taking a personal loan

- Having a garage sale
- Auctioning personal items on the Internet
- Borrowing against a retirement account (401(k))
- Getting a credit card cash advance (BUT if you are the debtor, realize that this can result in high credit card fees)

Be flexible about payment terms

Sometimes being flexible will pay off. Here are some ideas:

- Accept (weekly or monthly) payments
- Accept less than what the court ordered
- Let your former spouse/partner pay you with property or work instead of money
- If your former spouse/partner is out of work, help him or her find work

If there was domestic violence in your relationship some of these suggestions may not be appropriate for you. Talk to a family law facilitator or a domestic violence counselor at <http://www.courts.ca.gov/11529.htm> - Linking and Third if you are not sure what to do.

Accept installment payments

If you decide to accept installment payments write a letter to the debtor. Explain how the judgment will be paid. Include payment of interest and costs, if any.

Collecting Your Judgment When Your Former Spouse or Domestic Partner Will Not Pay You :

If, after trying to resolve the problem amicably, your former spouse/partner (the debtor) still fails to pay you the court-ordered amount you can take a number of legal steps:

- Getting information about the debtor's assets
- Putting a lien on the debtor's real property
- Collecting from the debtor's wages
- Collecting money from the debtor's bank account
- Putting a lien on the debtor's personal property
- Getting a *Writ of Execution (Money Judgment)*

Getting information about the debtor's assets

Before you go any further you should first find out if your former spouse/partner has any assets that you can go after in order to get the money he or she owes you. Once there is a judgment the creditor can ask that the debtor appear in court to answer questions under oath regarding his or her financial status and asset information. The creditor can then use this information to start legal

collection procedures. To do this, fill out and file an *Application and Order for Appearance and Examination* (Form EJ-125). There are some restrictions for filing this application so make sure you read the form carefully. Once you file this form you will get a court hearing and you will have to have a registered process server or the sheriff/marshal serve a copy of the *Application and Order for Appearance and Examination* on the debtor. You will have to pay a fee to the process server or the sheriff/marshal to serve your papers for you. Before you hire someone to do it ask him or her how much the fee will be and what services the fee includes.

If the debtor does not show up at the hearing the court may issue a bench warrant for his or her arrest. If the debtor shows up you will have the chance to ask him or her questions about where he or she works and what bank accounts, property, belongings, stocks or any other assets the debtor may have. Once you know what assets the debtor has you can take the necessary steps to try to collect from those assets.

Putting a lien on the debtor's real property

Prepare an *Abstract of Judgment — Civil and Small Claims* (Form EJ-001). All the required information must be included or the lien will not be valid.

1. Take or mail two copies of the completed *Abstract of Judgment* to the court so that the abstract can be certified by the clerk of the court. There is a fee for this (currently it is \$25 but fees may go up so check with the court clerk or your court's website). If you use mail be sure to include an envelope addressed to yourself with sufficient postage so that the court can return the certified *Abstract of Judgment* to you.
2. Take the certified *Abstract of Judgment* and one copy to the county recorder's office <http://www.courts.ca.gov/11529.htm> - Linking and Third in the county where you believe your former spouse/partner owns real property. There will be a recording fee which varies depending on a number of factors, but currently is about \$20.
3. The county recorder will provide notice to your former spouse/partner that you have recorded the *Abstract of Judgment*.
4. You will not be paid automatically but if your former spouse/partner refinances or sells the property you may get paid your money with 10% yearly interest.
5. If you believe your former spouse/partner owns property in more than one county you will have to record the abstract with the county clerk for each county where your former spouse/partner owns property. Only one *Abstract of Judgment* has to be recorded per county even if there are multiple properties within a single county.

Some county assessors will confirm if a debtor owns real property over the phone or you may be able to find that information online at the county assessor's website <http://www.courts.ca.gov/11529.htm> - Linking and Third.

Collecting from the debtor's wages

If your former spouse/partner is employed you can get an *Earnings Withholding Order* to garnish his or her wages until you are paid. You have the right to collect up to 25% of the amount over the federal minimum wage that he or she earns (as long as it is not exempt under other rules).

1. Ask the court to issue a *Writ of Execution* (Form EJ-130).
2. Prepare an *Application for Earnings Withholding Order* (Form WG-001).
3. Hire a process server or the sheriff/marshal to serve the employer with the necessary papers for the wage garnishment (earnings withholding).
4. The process server or sheriff/marshal will usually fill out the *Earnings Withholding Order* (Form WG-002) using the information from the *Writ of Execution* but you may have to fill it out yourself. This form has instructions on the back for the employer explaining how much money to garnish (take) from the debtor's wages.
5. The process server or sheriff/marshal must also serve the employer with the *Employer's Return* (Form WG-005) and *Employee Instructions (Wage Garnishment)* (Form WG-003). You may have to provide these forms to the process server or sheriff/marshal.

Your former spouse/partner has 10 days to file a *Claim of Exemption* (Form WG-006). If he or she does file this claim you have the right to oppose it.

Collecting money from the debtor's bank account

You can get a levy on the debtor's bank account. You will have to know the branch where the account is kept and, usually, you also have to know the account number.

1. Ask the court to issue a *Writ of Execution* (Form EJ-130).
2. Prepare instructions for the sheriff/marshal explaining what you want them to levy (take). Check with your levying officers to see if they have a local form for these instructions or prepare your own.
3. In many counties you will have to hire a process server to serve the bank with the *Notice of Levy* (Form EJ-150) in order to get the money from the account. If you hire a process server they generally will prepare the instructions as a part of their fee.
4. At the time of levy, or promptly after the levy, a process server or sheriff/marshal must also serve (personally or by mail) your former spouse/partner with copies of the writ, notice of levy and the *Exemptions From the Enforcement of Judgments* (Form EJ-155). Check to see if you are responsible for providing these forms for service.

Your former spouse/partner has 10 days to oppose the bank levy before the sheriff sends the money to you. He or she has to file a *Claim of Exemption* (Form EJ-160). If he or she does file this claim you have the right to oppose it. The court may have a hearing to decide whether to turn all or some of the money over to you as the creditor or let your former spouse/partner (the judgment debtor) keep it.

Putting a lien on the debtor's personal property

You can have the sheriff take the debtor's personal property and sell it at public auction to pay the debt but often the cost of doing this is more than the value of the property, so make sure that the property you want the sheriff to take and sell will be worth all the effort and money. One of the items of personal property you can put a lien on is the debtor's car. After you put on the lien, the sheriff would seize the car and sell it. This process is fairly expensive. Also, there often is not enough value, if any, left in the car to pay very much of the judgment. But if you decide you would like to do this, follow these steps:

1. Start by getting information about the car including its identification number (VIN), make, model, color, license number and physical location. If possible, also find out if a bank or other lender has an interest in the car.
2. Ask the court to issue a *Writ of Execution* (Form EJ-130) directed to the sheriff/marshal in the county where the car is located.
3. Give the sheriff/marshal written instructions that describe the car as thoroughly as possible and pay the fees and deposit (about \$1,000).
4. An officer will then physically remove the car and store it. Daily storage costs will accrue until the car is sold.
5. The sheriff/marshal then advertises the public auction of the car and gives notice to your former spouse/partner (the debtor).
6. If the car is sold at auction, before you get paid, the sheriff's fees will be paid. Also, your former spouse/partner is entitled to \$2,300 of the proceeds of the sale (paid to him or her or to a lienholder if there is a loan on the car).

Getting a *Writ of Execution (Money Judgment)*

When a court issues a *Writ of Execution (Money Judgment)* the court directs the sheriff or marshal to enforce the money judgment in the county where the assets are located.

- Writs of execution are only good for 180 days.

Getting a Writ of Execution may be a required first step in enforcing your money judgment and is the most common method of reaching a judgment debtor's interest in real and personal property. To ask the court to issue a writ you will have to prepare the *Writ of Execution* (Form EJ-130) and an affidavit supporting the Writ of Execution where you explain why you need this Writ of Execution to collect on your judgment. Courts may deal with Writs of Execution differently:

- You may have to file the writ and the affidavit and wait for the judge's decision. If the judge agrees with you the court will issue you a Writ of Execution.
- In some cases you may have to ask for a hearing in front of the judge and maybe even give notice to your former spouse/partner that you are going to court to get a Writ of Execution.

Steps Your Former Spouse or Domestic Partner Can Take to Stop Collection of Certain Assets:

A claim of exemption is a process that a judgment debtor follows where he or she claims that certain property (such as wages, bank accounts or other property) is exempt under the law and, therefore, cannot be taken by the judgment creditor to pay a money judgment. When the judgment creditor tries to garnish the wages of a judgment debtor the debtor can try to file a claim of exemption for the wage garnishment. The judgment creditor then has the right to oppose the claim of exemption.

- Claims of Exemption for Wage Garnishment
- Opposing a Claim of Exemption for Wage Garnishment

When the judgment creditor tries to put a levy on the property of the judgment debtor or tries to garnish something other than wages the debtor can file a claim of exemption for the levy or nonwage garnishment. The judgment creditor then has the right to oppose the claim of exemption.

- Claims of Exemption for a Levy or Other Nonwage Garnishment
- Opposing a Claim of Exemption for a Levy or Other Nonwage Garnishment

Claims of Exemption for Wage Garnishment

A Claim of Exemption is a form a debtor files with the levying officer (like the sheriff or marshal) explaining why the wages that the creditor wants the debtor's employer to garnish (take) should be exempt (excluded). There are laws and rules that tell you which types of incomes or property are exempt. You can read many of these exemptions in *Exemptions From the Enforcement of Judgments* (Form EJ-155).

To file a Claim of Exemption for a wage garnishment

Within 10 days of receiving a copy of the wage garnishment:

1. Fill out a *Claim of Exemption* (Form WG-006) and a *Financial Statement* (Form WG-007).
2. Use the *Exemptions From the Enforcement of Judgments* (Form EJ-155) to find out what property or income of yours is exempt (excluded) from a levy.
3. Turn in two copies of the Claim of Exemption and the Financial Statement to the levying officer in your case (the sheriff/marshal or process server) within 10 days of receiving the Earnings Withholding Order (the wage assignment). Keep one copy of both forms for yourself.
4. Your employer will hold on to the money garnished until 10 days go by and the creditor has not opposed your claim of exemption OR the judge makes a decision at the hearing on your claim of exemption.
5. If the creditor does not oppose your Claim of Exemption your employer will return the garnished wages to you.

6. If the creditor opposes your Claim of Exemption you will receive a *Notice of Opposition to Claim of Exemption* (Form WG-009) and *Notice of Hearing on Claim of Exemption* (Form WG-010/EJ-175) that will set a court date for a judge to make a decision.
7. If the judge agrees with your Claim of Exemption you will get your money back. If the judge agrees with the creditor your employer will send the money to the creditor every month. Read Code of Civil Procedure section 706.123<http://www.courts.ca.gov/11529.htm> - Linking and Third for a list of what you need to put in a Claim of Exemption.

To oppose a Claim of Exemption for a wage garnishment

Within 10 days of receiving a copy of the Claim of Exemption:

1. Fill out a *Notice of Opposition to Claim of Exemption* (Form WG-009) and make three copies.
2. Fill out a *Notice of Hearing on Claim of Exemption* (Form WG-010/EJ-175) and make three copies.
3. File the original of both forms with the court. The clerk will give you a court date.
4. Give a copy of each document to the levying officer (the sheriff or marshal). Keep one copy for yourself.
5. Have someone 18 or older, NOT YOU, serve a copy of each notice on your former spouse/partner (or, if he or she is represented by an attorney, on that attorney) at least 10 days before the hearing.
6. Go to your court hearing and explain to the judge why the money you are trying to collect is not exempt (excluded).

Claims of Exemption for a Levy or Other Nonwage Garnishment

A Claim of Exemption is a form a debtor files with the levying officer (like the sheriff or marshal) explaining why the property or money that the creditor wants to take should be exempt (excluded). There are laws and rules that say which types of incomes or property are exempt.

To file a Claim of Exemption for a levy or other nongarnishment

Within 10 days of receiving the Notice of Levy:

1. Fill out a *Claim of Exemption* (Form EJ-160) and a *Financial Statement* (Form EJ-165).
2. Use the *Exemptions From the Enforcement of Judgments* (Form EJ-155) to find out what property or income is exempt from a levy.
3. Turn in the Claim of Exemption to the levying officer in your case (like the sheriff/marshal or process server) within 10 days of receiving the Notice of Levy.
4. The levying officer will hold on to your property or money until 10 days go by and the creditor does not oppose your Claim of Exemption OR the judge makes a decision at the hearing on the Claim of Exemption.

5. If the creditor does not oppose your Claim of Exemption the levying officer will return your property or money to you.
6. If the creditor opposes your Claim of Exemption you will receive a *Notice of Opposition to Claim of Exemption* (Form EJ-170) and *Notice of Hearing on Claim of Exemption* (Form WG-010/EJ-175) that will set a court date for a judge to make a decision.
7. At the hearing the judge will make the final decision. If the judge agrees with you, you will get your money or property back. If the judge agrees with the creditor the levying officer will turn over your money or property to the creditor.

To oppose a Claim of Exemption for nonwage garnishments

Within 10 days of receiving a copy of the Claim of Exemption:

1. Fill out a *Notice of Opposition to Claim of Exemption* (Form EJ-170) and make three copies.
2. Fill out a *Notice of Hearing on Claim of Exemption* (Form EJ-175) and make three copies.
3. File the original of both forms with the court. The clerk will give you (the creditor) a court date.
4. Give a copy of each document to the levying officer (like the sheriff/marshal). Keep one copy for yourself.
5. Have someone 18 or older, NOT YOU, serve a copy of each notice on your former spouse/partner (or, if he or she is represented by an attorney, on that attorney) at least 10 days before the hearing.
6. Go to the court hearing and explain to the judge why the money or property you are trying to collect is not exempt (excluded).

Renew Your Family Law Judgment:

A family law money judgment will last until paid in full or satisfied in some other way. Unlike other money judgments (where the person who is owed the money has to renew the judgment every 10 years), family law money judgments do NOT expire. So you do not have to file a request for renewal of the judgment. Your court order will be valid until paid in full.

Money judgments accumulate interest at the legal rate of 10% per year. The interest accumulates daily. So, for example, if you have a judgment for \$10,000 and you get no payments for the first year the interest that would accumulate would be \$1,000 after 1 year or \$2.74 per day.

In some cases, you may decide to renew your judgment. The reason to do this is, when you renew a judgment, you update the amount that you are owed to add the accumulated interest and costs you have incurred since the judgment was entered, plus show credit for any partial payments that have been made.

All the interest, costs, plus the unpaid principal are added together and it becomes the new principal. This means that the accumulated interest and costs become part of the principal and future interest will accumulate on a higher amount and will be higher. For example, if you have a judgment for \$10,000 the yearly interest would be \$1,000. After nine years you would be owed \$10,000 plus \$9,000 if you had not received any payments along the way.

If you do not renew your judgment, there will continue to be \$1,000 in interest added yearly, however, if you renew after nine years the new principal becomes \$19,000 which means that the yearly interest, after renewal, would be \$1,900 (\$900 more per year than if you had not renewed the judgment).

To renew the judgment

If you want to renew your judgment, file a form called *Application for and Renewal of Judgment* (Form EJ-190). You will have to pay a fee. If you decide to renew your judgment you have to file before the first 10 years are up. You cannot enforce the renewed judgment until you serve your former spouse/partner with a form called *Notice of Renewal of Judgment* (Form EJ-195). Your former spouse/partner then has 30 days from the day he or she is served with the notice to file a motion to vacate or modify the renewal.

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