

DEFENSES TO GARNISHMENT

1. File a standard Affidavit with the court claiming your right to exempt this money. The affidavit must also be sent to the judgment creditor and any attorney for the judgment creditor.
2. The spouse or any other person who has an ownership interest in the property may file an affidavit showing the right of ownership and requesting the court to return the property. (i.e., tenants in the entireties - bank accounts, R.E., etc.)
3. The judgment creditor must then file an affidavit with the court within two days to challenge the exemption.
4. Contact the creditor's attorney, explain your exemption, and offer reasonable evidence.
5. Give the creditor a chance to withdraw the garnishment. Most will do so if they see they have frozen an exempt account.
6. If garnishment not dissolved, file a motion to dissolve the garnishment. Florida statutes entitle persons to an "immediate" hearing on the motion to dissolve the garnishment.
7. For the hearing, must bring evidence of exemption - copies of bank statements, signature cards, or account agreements to show the judge.
8. Consider taking more aggressive actions, especially if you believe the creditor knew the accounts should be exempt and garnished them anyway to harass or extort a settlement.

Florida common law allows a debtor to sue its creditor for the tort of wrongful garnishment if the creditor acted maliciously.

A suit is proper after the garnishment is dissolved, and the wrongful garnishment must be brought as a new and separate action rather than a counterclaim. Courts have held that lack of probable cause to garnish an account implies malice.

The leading case is Strickland v. Commerce Loan Company, 158 So. 2d 814.

The facts necessary to support a claim of wrongful garnishment may also support recovery on theory of abuse of process.