In theory, after a creditor gets a court judgment, it can ask a sheriff to seize your car, household goods, or other personal property and then creditor would sell the property to repay the debt, often called “judgment execution.” In practice, most states limit this kind of seizure so much that a creditor has no financial incentive to have this property seized and sold. You have more to fear from wage garnishment or seizure of your bank account than from loss of personal property.

In many states, exemption laws protect your car and other personal property from seizure to pay a court judgment. (Exemption laws do not apply to secured creditors. For example, an auto lender can repossess your car if you do not keep up on your car payments. See Chapter 14.[1])

Exemptions laws vary considerably by state. Some laws specify that a specific dollar amount of all your personal property is exempt from seizure, such as $8,000. You can choose which items of your personal property you want to keep, as long as what you keep has a value of $8,000 or less. Others specifically exempt an item of personal property, such as a car, if its value is under a certain amount.

The value of your car or personal property typically is not determined based on what the property is worth, but how much “equity” you have in the property. Your equity is how much the property is worth now minus any amount you still owe on a loan that takes that property as collateral. For example, if your car is worth $10,000, but you owe $7,000 on your car loan, your equity in the car is only $3,000. A $3,000 property exemption would fully protect your $10,000 car from seizure to repay a judgment debt. Remember, however, that if you do not keep up on your payments for the $7,000 car loan, the auto lender can still repossess the car.

States may list certain types of personal property that are totally exempt from seizure, no matter how much money they are worth, such as tools and supplies required for your occupation, clothing, a bible, and certain household goods.

Some creditors or their attorneys or collection agents may try to force you to turn over property that by law is exempt from seizure, pointing to small print in the contract that says you agreed to waive rights under state exemption laws. Do not give in—these contract provisions are illegal and unenforceable.

If the creditor asks a sheriff to seize personal property that is exempt, file a notice of exempt property or take similar steps specified by your state law. In many states, you will need to file papers with the sheriff or a public official by a certain deadline in order to get the benefit of an exemption. The sheriff also cannot seize property in your possession which does not belong to you. To stop its seizure, the property’s rightful owner may have to file a declaration of ownership with the appropriate office.

If the sheriff is able to properly seize your property, it will then be sold at public auction, and the part of the proceeds that are not exempt will go to the creditor to help pay off the judgment. These auctions are usually poorly attended and bring low bids. For this reason, creditors rarely seize used household goods, which will have minimal resale value. If property is sold at auction, you or your friends can attend the auction and re-purchase the possessions at a bargain price. After a sale, if the sale proceeds are not enough to pay the judgment in full, the creditor may keep trying to collect the remainder.

Court judgments remain on the books for many years. Even if a creditor does not try to seize and sell your property after obtaining a judgment, it still may try to do so years later.

Because state exemption laws are complex, you may want to get professional help to understand which items of your personal property are subject to seizure. Look also for a guide to exemption laws for your state, which may be available from the local bar association, a legal services office, or a nonprofit consumer credit counseling agency. Make sure the guide is up-to-date.

Source: National Consumer Law Center, Surviving Debt [50th NCLC Anniversary Edition], updated at www.nclc.org/library
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