



MOUNTAIN POST LEGAL BRIEF

A Preventive Law Service of The Office of the Staff Judge Advocate
Headquarters, Fort Carson
Keeping You Informed On Personal Legal Affairs



GARNISHMENTS AND INVOLUNTARY ALLOTMENTS

Consider these questions and answers regarding the procedures involved in obtaining garnishments and involuntary allotments.

Q: I AM OWED ALIMONY AND CHILD SUPPORT BY A SOLDIER AND I HAVE A COURT ORDER OF SUPPORT. CAN I GET THIS WITHHELD FROM HIS PAY?

A: Yes. There are two ways to do this: garnishment and involuntary allotment.

Q: WHAT IS GARNISHMENT?

A: Garnishment is a statutory proceeding whereby a person's property or money (usually a bank account or paycheck) is taken and applied to the payment of the former's debt. The normal situation involves the soldier's paycheck at the Defense Finance and Accounting Service (DFAS).

Q: WHAT TYPES OF PAY CAN BE GARNISHED?

A: All pay after taxes is garnishable. Such pay includes basic pay, hazardous duty pay, severance pay, sick pay, cash awards, pensions, retirement, etc. However, allowances such as BAH, BAS, and Family Separation Allowances cannot be garnished.

Q: WHAT IS GARNISHMENT USED TO ENFORCE?

A: Garnishment is used to enforce a soldier's obligation to pay child support and/or alimony.

Q: CAN I USE GARNISHMENT PROCEEDINGS IN COLORADO TO COLLECT UNPAID ALIMONY AND/OR CHILD SUPPORT?

A: Yes. In Colorado, garnishment can be used to enforce an individual's obligation to pay child support or alimony.

Q: HOW DO I START A GARNISHMENT PROCEEDING FOR CHILD SUPPORT?

A: Let's use Colorado as an example. To start a garnishment proceeding, you must first have a court order requiring the soldier to pay support. Typically this court order will be from a divorce, child support, or custody hearing. Secondly, you must obtain a garnishment order from the local court. Once the garnishment order is obtained from the local court it must be served on DFAS, using either regular mail or fax

Q: WILL I NEED MORE INFORMATION TO ENSURE PROCESSING BY THE GOVERNMENTAL AGENCY?

A: Yes. Sufficient identifying information must accompany the legal papers. The following identifying information about the individual owing child support (obligor) is requested if known: Full name, date of birth, Social Security number, component of the governmental entity for which the soldier works and the official duty station or worksite, and status of the obligor.

Q: HOW MUCH OF AN INDIVIDUAL'S PAY MAY THE COURT GARNISH?

A: There are state and federal limitations on the amount of pay that can be garnished. Both federal and Colorado law limit garnishments between 50% and 65% depending on the circumstances, such as whether or not the obligor is currently supporting other children.

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Q: IF MY PAY IS GARNISHED, HOW CAN I STOP THE GARNISHMENT?

A: The only way a soldier can stop the garnishment is to go to the court that issued it and file a motion to stop it or reduce it. Under Colorado law, you will have to demonstrate a change of circumstances since the last court order that required the garnishment before the court can stop or reduce the garnishment.

Q: CAN THE ARMY WITHHOLD MONEY FROM A SOLDIER'S PAYCHECK WITHOUT GARNISHMENT?

A: Yes. This process is called Involuntary Allotment.

Q: WHEN CAN INVOLUNTARY ALLOTMENT BE USED?

A: Involuntary Allotment is a procedure that can be started when the soldier is behind in an amount equal to at least two months in court-ordered payments (alimony or child support). These payments must have been made payable through a state official, and normally they are payable through the Clerk of Court.

Q: HOW CAN I START AN INVOLUNTARY ALLOTMENT?

A: To start an allotment, DFAS must receive notice from an authorized person, agent or court that the soldier is two months behind in the support payments, along with a certified copy of the court order. Notice can be given by a child support enforcement agency, department of social services or the court, and it must be in the form of a court order, letter, statement, certificate or other document issued by the agency, department or court.

Q: WHAT HAPPENS WHEN THE NOTICE AND COURT ORDER ARE FILED WITH DFAS?

A: DFAS must provide notice to the soldier and the soldier's commander. The commander sends the soldier to a judge advocate for consultation to discuss the legal and other factors involved with respect to the soldier's support obligation and the failure to make payments under the obligation. The allotment takes effect 30 days after the notice is given.

Q: WHAT IS THE MAXIMUM AMOUNT OF THE ALLOTMENT?

A: The amount of the allotment shall be the amount necessary to comply with the order. If the order so provides, the amount may include arrearages as well as the amounts for current support. However, it shall not exceed 60% of the soldier's salary unless the soldier is more than 3 months behind, which in that case it can be 65%.

Q: CAN THE ALLOTMENT BE ADJUSTED OR DISCONTINUED?

A: Yes. An allotment can be adjusted or discontinued only upon notice from the authorized state official and not by the soldier.

Q: IF I HAVE OTHER QUESTIONS ABOUT INVOLUNTARY CHILD SUPPORT/ALIMONY, WHAT SHOULD I DO?

A: Contact the Fort Carson Legal Assistance Division to arrange a consultation with a legal assistance attorney. Your attorney can answer the many questions and help you to make a fair and intelligent decision about your choices, options and alternatives.

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