

KEEP IN MIND!

A person's judgment proof status can change at anytime if income increases. People can find a job, win the lottery, or receive an inheritance!

Can a creditor collect on my Judgment?

A consumer may be immune to one form of judgment collection, yet susceptible to another. For example, although a collection agency cannot hope to garnish the wages of an individual who is unemployed, if that individual owns a home the judgment creditor may be able to place a lien against that home. The individual would not be able to sell the home without paying the creditor out of the proceeds.

In addition, the fact that the individual is not currently working does not mean that he or she does not have money in his or her checking and/or savings accounts. As long the money in his or her bank accounts is not exempt (protected) from garnishment, as are child support payments and government benefit checks, the collection agency may request a bank levy and seize the individual's banking accounts.

Can I avoid a Judgment?

If a collection agency knows prior to filing suit that it will be unable to collect upon a judgment debt, it is less likely to incur the expense of a lawsuit to obtain that judgment. It is possible that notifying the collection agency of your judgment proof status will prevent a lawsuit.

Remember, however, that just because you are judgment proof does not mean that the creditor will not sue you in order to get, and receive, a judgment against you. Some, if not most, of collection agency attorneys are hired only to obtain a judgment against a debtor; collection of that debt is someone else's job.

How can the Civil Self-Help Center help me?

The Sacramento County Public Law Library's Civil Self-Help Center is intended to assist unrepresented persons who have chosen to pursue or defend against a civil lawsuit in the Sacramento Superior Court. The Civil Self-Help Center is not intended to replace legal research and the assistance of an attorney.

To this end, the Self-Help Center provides legal information, not legal advice. The difference between the two can be thought of as telling you what you can do versus what you should do.

The Self-Help Center can help you understand legal papers that you have received, or can help make sure that you have filled out certain legal forms correctly. We cannot advise you as to whether you should file a lawsuit, what we believe your lawsuit is worth, or any other strategic aspect of your case.

Because of these limits, we recommend consulting with an attorney. If you choose not to consult with an attorney, we suggest that you conduct sufficient research to become familiar and comfortable with the law and legal procedure in your case.

Sacramento County Public Law Library

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Sacramento, CA 95814
saclaw.org

Am I Judgment Proof?



A free informational guide courtesy of the Sacramento County Public Law Library and Civil Self-Help Center.

This pamphlet is intended for general educational use only, and is not intended as legal advice or as a substitute for your own legal research or consultation with an attorney.

What does it mean to be “Judgment Proof”?

“Judgment Proof” is not a legal term, although we often receive requests for a legal definition of the phrase at the Law Library. In layman’s terms, a person is judgment proof when it makes no sense for a creditor to take that person to court because even if the creditor wins the suit and obtains a judgment, the creditor will not be able to collect.

People with very little income and property and no expectation of a change for the better in either have little to lose if they are sued by a creditor. You cannot go to jail for bad debt. California Constitution Article 1, Section 10. Both state and federal laws protect essentials such as basic clothing, ordinary household furnishings, food, and Social Security and disability benefits from being taken to pay for a judgment. 42 U.S.C. § 407; California Code of Civil Procedure (CCP) §§ 704.010 – 704.210. If your credit rating is already badly damaged, doing nothing in response to a creditor’s lawsuit could be an effective way of dealing with the situation.

A true judgment proof debtor is not employed and has no future prospects of finding employment, lives on government pensions or retirement, and has no funds in his or her checking or savings accounts that do not stem directly from exempt (protected) funds.

Can someone who is judgment proof still receive a judgment against them?

Yes! Being judgment proof does not mean that a court does not have the authority to grant a collection agency or other private creditor a judgment against you. Should a creditor sue, the court will decide based on the evidence presented by both parties, the law, and common sense. If you don’t show up in court, the creditor will win the lawsuit by default. This is known as a “default judgment.”

If you are "judgment-proof," writing your creditors or plaintiff's attorney to explain your situation may convince them not to bother suing you. Samples of such letters are available from the King County (WA) Bar Association at tinyurl.com/kum24z6.

If you owe old debts and a collection agency has notified you of its intent to sue, being judgment proof can protect you from some of the more nasty consequences of losing a collection agency lawsuit, such as wage garnishment, property liens, and bank account levies from debt collectors (see the “How to Ask the Court to Stop or Reduce a Wage Garnishment,” and “How to Ask the Court to Stop or Reduce a Bank Levy,” Step-by-Step Guides, available for free on our website at saclaw.org/law-101/).

Remember, however, that just because you are judgment proof, this does not mean that a creditor can and will not sue you in order to seek, and obtain, a judgment against you.

How long can a judgment remain on a credit report?

Judgments, which are detrimental to your credit rating, typically remain on your credit report for seven years. In California, however, judgments can be enforced for ten years and then renewed *ad infinitum* as soon as five years after that. CCP §§ 683.010 – 683.220. This can result in a judgment after a lawsuit remaining on your credit report for much longer than the standard seven-year reporting period. See the *Fair Credit Reporting Act* (FCRA), 15 U.S.C. § 1681 et seq.

Free Credit Reports

The amended Fair Credit Reporting Act permits consumers to request a free copy of their credit report once every 12 months from each of the three major credit reporting agencies.

You can order a free credit report:

- On the Internet: www.annualcreditreport.com
- On the phone: call 1-877-322-8228

Equifax (www.equifax.com)

P.O. Box 740241

Atlanta, GA 30374-0241

Experian (www.experian.com)

P.O. Box 2104

Allen, TX 75013-0949

Trans Union (www.transunion.com)

P.O. Box 1000

Chester, PA 19022