

CIVIL COURT OF THE CITY OF NEW YORK

Legal/Statutory Memorandum

Subject: Execution and Restraints
on Money Judgments

Class: LSM - 168
Category: GP-10, LT-10, SC-10
Eff. Date: January 1, 2009

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Effective January 1, 2009, chapter 575 of the Laws of 2008 amends the CPLR, in relation to restraint, execution, income execution and levy procedures with the purpose of establishing a procedure for the execution of money judgments on bank accounts consistent with the aims of State and Federal laws exempting certain income from debt collection.

Please see amendment to CPLR § 5205 adding subdivisions (l), (m) and (n), § 5222 subdivision (b), (c), (d), and (e) and adding subdivisions (h), (i) and (j), adding a new section 5222-a, § 5230 subdivision (a) as amended by chapter 59 of the laws of 1993, § 5231 subdivision (b) as amended by chapter 178 of the laws of 1990, and § 5232 adding subdivisions (e), (f) and (g) attached.

Summary of Provisions:

- CPLR § 5205 is amended to include within the list of exempt personal property the first \$2,500 in a bank account when the account contains exempt funds which have been directly or electronically deposited within the last 45 days. This amount will be subject to an annual adjustment for inflation which will be published by the New York State Banking Superintendent on its state website.
- CPLR § 5222 subsections (b), (d) and (e) which govern the restraining notice form have been amended to make clear that certain funds are exempt.
- CPLR § 5222 is amended by adding new subdivisions (h), (i), and (j).

New subdivision (h) makes clear that the first \$2,500 in a bank account cannot be restrained when the account contains exempt funds which have been directly or electronically deposited within the last 45 days.

New subdivision (i) makes clear that an amount equal to two-hundred and forty times the minimum wage cannot be restrained except such part that a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependants.

New subdivision (j) makes clear that a banking institution cannot charge a fee if it is served with a restraining notice and the bank account cannot be lawfully restrained or it is restrained in violation of the CPLR.

- A new CPLR § 5222-a creates a procedure in regards to exempt funds.

New subdivision (a) sets the applicability and requires all persons to comply with the new procedure.

New subdivision (b) (1) requires persons to serve the banking institution with two copies of the restraining notice, an exemption notice and two copies of the exemption claim form.

New subdivision (b) (2) requires persons seeking an execution by levy to serve the banking institution with two copies of the restraining notice, an exemption notice and two copies of the exemption claim form.

New subdivision (b) (3) requires the banking institution to serve the judgment debtor within two days of receipt of the restraining notice with the copies of the exemption notice and exemption claim forms provided to the banking institution by the person seeking the restraint or levy.

New subdivision (b) (4) creates the exemption notice and exemption claim forms.

New subdivision (c) (1) requires the judgment debtor who is claiming an exemption to complete the exemption claim forms and return them to the banking institution and judgment creditor within 20 days.

New subdivision (c) (2) requires a banking institution served by a judgment debtor with an exemption claim form to notify the judgment creditor forthwith.

New subdivision (c) (3) requires a banking institution to release funds to a judgment debtor eight days after being served with a completed exemption form unless the judgment creditor has interposed an objection.

New subdivision (c) (4) sets forth the options open to a judgment creditor who is served with an exemption claim form by the judgment debtor and how to proceed.

New subdivision (c) (5) provides that the banking institution may subject the funds to execution after 25 days if the judgment debtor does not respond to the service of the exemption notice and exemption claim forms.

New subdivision (d) creates a procedure for a judgment creditor who objects to a judgment debtor's claim of exemption and wishes to contest the judgment debtor's claim of exempt funds. It creates an expedited court procedure to determine whether or not the funds are exempt.

New subdivision (e) sets forth the duties of the banking institution where a judgment creditor has interposed an objection to a judgment debtor's claim of exemption.

New subdivision (f) provides that during the procedure to determine whether or not the funds are exempt, either the judgment creditor or the judgment debtor may send a written direction to the banking institution to release the funds to the other party.

New subdivision (g) permits a judgment debtor to counterclaim against a judgment creditor who disputes a judgment debtor's claim of exempt funds in bad faith or who has actual knowledge that the funds are exempt.

- CPLR § 5230 subdivision (a) which sets forth the contents of the form of the execution for the enforcement of a money judgment is amended to conform the form to reflect the changes made by this act regarding exempt funds.
- CPLR § 5231 subdivision (b) which governs the issuance of the income execution for the enforcement of a money judgment is amended to make it clear that the New York State minimum wage is applicable to the exemption claimed therein.
- CPLR § 5232 is amended to add subdivision (e), (f) and (g).

New subdivision (e) reflects conforming amendments to reflect the changes made by this act regarding exempt funds.

New subdivision (f) makes clear that a banking institution cannot charge a fee if it is served with a levy by service of execution on a bank account and the bank cannot lawfully garnish or execute against the account or it is garnished or executed against in violation of the CPLR.

New subdivision (g) requires that the person serving the levy by execution include an exemption notice and two copies of the exemption claim form along with the execution.

Based on these amendments the following forms have been revised (*see attached*):

Restraining Notice (CIV-SC- 59 revised 2/09);
Execution Against Income/Property form (CIV-SC-30 revised 1/09);
Instructions for Service of a Restraining Notice (CIV-SC-57 revised 1/09), and
Affidavit of Service of a Restraining Notice (CIV-SC-58 revised 2/09)

In addition, the following forms have been created (*see attached*):

Exemption Notice (CIV-SC- 76 created 1/09)
Exemption Claim forms (CIV-SC-75 created 1/09))

Dated February 6, 2009

/s/
Administrative Judge
Fern A. Fisher