

## **Montana Debt Collection Laws**

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*[Smith Law Firm, P.C.](#) is Montana's oldest continuously operating law firm. It was established in 1871 by Masenna Bullard, when Montana was still a territory. Bullard came to Montana from the East following the gold miners. He was a man of some means and spent most of his career grub-staking miners on Helena's famous A Last Chance Gulch. In the late 1880's, Bullard enticed a young J. Miller Smith, Sr., then a U.S. Marshall who had come to Helena, to return some notorious bandits to Missouri, to join him and study law under him.*

*Bullard sold out and returned to the East in about 1892. Smith continued the law practice and was joined by his sons, J. Miller Smith, Jr., David Smith and Paul W. Smith, as they became of age. J. Miller Smith, Jr.'s son, Chadwick H. Smith, joined his father and uncles in 1951. R.J. "Jim" Sewell, Jr. joined the firm in June, 1971 and acquired the firm from Chad Smith in 1992. Bruce M. Spencer joined in 1994. Mr. Sewell and Mr. Spencer are the shareholders. There is one associate at this time, Scott H. Clement, and six other staff.*

*Bruce obtained his undergraduate degree from the University of Montana in Business and Finance and his J.D. from the University of Oregon in 1992. He has been active in the representation of creditors since joining the firm. The firm is a member of [The National Association of Retail Collection Attorneys](#) (NARCA), [ACA International](#), and [Commercial Law League of America](#) (CLLA).*

## **Montana's Debt Collection Laws**

### **1. Statutes of Limitation**

- Actions on judgments, 10 years. [Mont. Code Ann. § 27-2-201](#). In Montana there is no process to renew a judgment. A creditor needs to sue on the old judgment within 10 years.
- Contracts in writing, 8 years. [Mont. Code Ann. § 27-2-202\(1\)](#)
- Contracts not in writing, 5 years. [Mont. Code Ann. § 27-2-202\(2\)](#)
- The Montana Supreme Court does not consider credit card accounts to be contracts in writing, thus they are subject to a 5 year statute of limitation from the date of last payment. [Colorado Nat. Bank of Denver v. Story, 261 Mont. 375, 862 P.2d 1120 \(1993\)](#)
- Bad Checks, 6 years from the date of a demand for payment. [Mont. Code Ann. § 27-1-717](#).
- Property damage only, [Mont. Code Ann. § 2 years. 27-2-207](#)
- Negligence, 3 years. [Mont. Code Ann. § 27-2-204](#)

## **2. Bad Check Laws**

A creditor may recover from the maker of the check (the person who signs, not necessarily the account holder) the following penalties:

An amount equal to the service charge of up to \$30, plus the greater of \$100 or three times the amount for which the check, draft, converted check, electronic funds transfer, or order was issued. However, damages may not exceed the value of the check, draft, converted check, electronic funds transfer, or order by more than \$500.

[Mont. Code Ann. § 27-1-717](#). General practice in Montana is to limit damages to a maximum of \$500.00 despite the statutory language. Acceptance of partial payments or a payment plan does not waive a creditor's rights to penalties under the statute.

## **3. Garnishment**

Wages may be garnished and bank accounts may be levied in Montana. The judgment creditor must make sure that the process server provides a notice of seizure to the debtor, which contains a list of exemptions and explains the court process for requesting an exemption. [Mont. Code Ann. § 25-13-211](#).

### **3.1 Time limit for individual writ**

Both writs in Justice and District court are valid for 120 days from the date of issuance. [Mont. Code Ann. § 25-13-402](#); Justice Court Rule of Civil Procedure 23. A levy on earnings is effective for 120 days and applies to all earnings from the date of levy through the expiration of the writ. After 120 days, if the judgment remains unsatisfied, a judgment creditor should request a new writ be issued. It is important to remember that the expired writ must be returned to the clerk of court before a new writ may be issued.

### **3.2 Notice required with writ**

The Montana Supreme Court in [Dorwart v. Caraway, 1998 MT 191, 290 Mont. 196, 966 P.2d 1121 \(1998\)](#) declared Montana's writ of execution statutes unconstitutional, because they did not provide the means for a judgment debtor to contest the levying of a writ and to assert his right to exemptions. The Court in [Dorwart](#) required that a notice be given to judgment debtors and that a procedure be put in place whereby they can assert their rights to exemptions.

### **25-13-211. Notification of seizure**

1. After the sheriff or levying officer has executed upon the property of a judgment debtor, a notice of seizure must be served by the sheriff or levying officer upon the judgment debtor within 5 days of seizure. The notification must:
  - a. inform the judgment debtor that certain described property or money of the judgment debtor's was seized to satisfy a judgment against the debtor;

- b. state the case name, the date of judgment, and the name of the judgment creditor;
  - c. advise the judgment debtor that the judgment debtor may be entitled to claim an exemption from execution on the property as described in part 6 of this chapter or other provisions of state or federal law; and
  - d. state the procedure by which the judgment debtor may claim an exemption and file a request for an exemption hearing.
2. The notification may be made by personal service or by United States mail, postage prepaid, to the judgment debtor's last-known address. If service is by mail, service is completed on the date the sheriff or levying officer places the notification in the mail.

### **25-13-212. Claiming exemption -- process -- time for hearing**

1. To claim an exemption from execution, a judgment debtor shall file a request for a hearing with the court that issued the execution. The request must be in writing, and a copy of the request must be mailed by the judgment debtor on the date of filing to the judgment creditor or the judgment creditor's attorney and to the sheriff or levying officer. The request must be filed within 10 days, excluding weekends and holidays, of the date of:
  - a. the judgment debtor's receipt of notification of execution, if notification was by personal service; or
  - b. the date notification was mailed to the judgment debtor pursuant to 25-13-211(2).
2. If the judgment debtor does not file a request for an exemption hearing within the period provided for in subsection (1), the judgment debtor may not claim an exemption in the seized property.
3. A court that receives a request for an exemption hearing shall conduct the hearing within 10 days, excluding weekends and holidays, from the date of receipt of the request.
4. The court shall forward the order determining the judgment debtor's exemption claim to the sheriff or levying officer.

### **3.3 Till Taps**

Dorwart addresses situations where a creditor seeks to levy on personal property and requires that an "execution warrant" be issued prior to the Sheriff going into the personal residence of the debtor. In order to obtain an "execution warrant," you must file an affidavit along with your request for the issuance of a writ of execution. The affidavit should state that a writ of execution has been returned unsatisfied in whole or in part, and that you have reason to believe that there is property subject to execution in the debtor's residence or business. The affidavit must also describe the property you seek to have the Sheriff levy upon.

### **3.4 Writs in multiple counties.**

Writs may be issued at the same time to different counties. [Mont. Code Ann. § 25-13-401](#).

### **3.5 Property subject to attachment pursuant to a writ of execution.**

[Mont. Code Ann. § 25-13-501](#):

1. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action are liable to execution.
2. Shares and interest in any corporation or company, debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery may be attached on execution, in like manner as upon writs of attachment.
3. Until a levy, property is not affected by the execution.

### **3.6 Garnishment of Wages**

In addition to wages, a creditor can garnish any amounts of money owed to the judgment debtor, such as payments for a business, accounts receivable, payments on a personal note and the like. However, with an individual debtor, it is most likely that wages are their major asset. The process is to have a writ of execution issued by the court, instruct the sheriff or process server to garnish wages, and then they will serve the writ on the employer and obtain a percentage of wages to satisfy the judgment.

A writ of execution served upon an employer must be accompanied by a document that reasonably describes the exemptions from execution for wages. [Mont. Code Ann. § 25-13-614](#). The amount of wages a judgment creditor can garnish is governed by State and Federal Law. [Mont. Code Ann. § 25-13-614](#) and [15 USC § 1673](#) provide that the maximum part of disposable earnings of a judgment debtor subject to execution is the lessor of:

- (1) the amount by which the disposable earnings for the week exceeded 30 times the federal minimum hourly wage; or
- (2) 25 percent of his disposable earnings for that week.

The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld. [15 USC § 1672](#). The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. [15 USC § 1672](#). Mileage and travel expenses are considered "earnings" in Montana.

[Williams v. Sorenson, 106 Mont. 122, 75 P.2d 784 \(1938\).](#) A lump-sum severance payment, due to its lump-sum nature, was not included as "earnings" nor "disposable earnings," thus permitting garnishment of the full amount. [Pallante v. International Venture Investments, Ltd., 622 F.Supp. 667 \(N.D. Ohio 1985\).](#)

Funds deposited in checking account by judgment debtor which included benefits and pensions paid the judgment debtor and his wife under programs of the Veterans Administration, Social Security Administration and county welfare department, are not within the definition of "earnings" [Phillips v. Bartolomie, Cal.App. 1 Dist.1975, 121 Cal.Rptr. 56, 46 Cal.App.3d 346.](#)

### **3.7 Execution Against Real And Personal Property**

#### **Real Property**

##### **Keep realistic expectations when executing on real property.**

Levying on Real Property and selling it at a Sheriff's sale may not bring as much money as the judgment creditor may hope for. First, all prior liens must be paid before the judgment lien. [Mont. Code Ann. § 25-13-712.](#) Then the debtor is entitled to a \$250,000.00 homestead exemption, with some exceptions, from the proceeds of sale. [Mont. Code Ann. § 70-32-104.](#) If there is money left over after these items and the cost of sale have been paid, the judgment creditor will receive some. The practical effect of this is the majority of homes in Montana do not warrant proceeding with a Sheriffs sale. Raw land that has no liens or a home that is paid for may be worth pursuing.

##### **Lien on Real Property Required for Execution.**

Before executing on real property there must be a judgment lien on the property. All judgments docketed with the District Court create a lien on real property. If a creditor has a judgment in one county and the debtor has property in another county, they must first "transcribe" the judgment to the county where the real property is located. A judgment from justice, small claims, and city court creates a lien on real property upon filing a transcript of the original docket with the clerk of district court in the county where the real property is located. [Mont. Code Ann. § 25-31-914.](#) The liens are valid for 10 years.

##### **Process of Execution on Real Property.**

- a. Have a writ issued to the Sheriff and instruct him to levy on the real property of the debtor and sell the property.
- b. Prior to the sale, the Sheriff must give notice of the sale, particularly describing the property, for 20 days in three public places in the county where the real property is located, and also where the real property is to be sold, which may be either at the courthouse or on the premises. Notice must also be published once a week for 20 days in some newspaper published in the county, if there is one. [Mont. Code Ann. § 25-13-702.](#) Personal service on the judgment debtor is not required for

execution sales. [Bank of Baker v. Mikelson Land Co., 1999MT 76, 294 Mont. 64, 979 P.2d 180 \(1999\).](#)

c. The sale is to be an auction to the highest bidder. It must be held between the hours of 9:00 a.m. and 5:00 p.m. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels or of articles that can be sold to advantage separately, and the sheriff must follow such directions. [Mont. Code Ann. § 25-13-704.](#) The purchase price must be paid in cash; checks are not acceptable. [Mont. Code Ann. § 25-13-708; Proto v. Missoula County, 230 Mont. 351, 749 P.2d 1094 \(1988\).](#)

d. After sufficient property has been sold to satisfy the judgment, no further property is to be sold. [Mont. Code Ann. § 25-13-704.](#)

Upon sale the sheriff must give to the purchaser a certificate of sale, containing:

1. a particular description of the property;
2. the price bid for each distinct lot or parcel;
3. the whole price bid;
4. a statement that the property is subject to redemption;

A duplicate of this certificate must be filed with the county clerk and recorder.

### **What a purchaser receives - Right of Redemption.**

A purchaser of real property at a Sheriff's Sale only receives whatever right, title, and interest the judgment debtor had in the property. [Mont. Code Ann. § 25-13-710.](#) If the judgment debtor has owned the real property less than two years, the sale is absolute. In all other cases, the judgment debtor has a right to redeem. [Mont. Code Ann. § 25-13-710.](#)

The following persons have the right to redeem:

- (a) the judgment debtor, the judgment debtor's spouse, or his successor in interest in the whole or any part of the property and, if the judgment debtor or successor be a corporation, a stockholder thereof;
- (b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part thereof subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem. [Mont. Code Ann. § 25-13-801.](#)

The property may be redeemed anytime within one year after the sale by paying the purchaser (1) the amount paid for the property plus interest at the judgment rate; (2) the amount of assessment or taxes which the purchaser may have paid and interest on that amount; (3) the amount for repairs, maintenance and other expenditures the purchaser reasonably made; and (4) if the purchaser was a creditor having a

lien with priority over the redemptioner other than the judgment for which the sale was conducted, the amount of the lien.

If the debtor personally occupies the land sold at execution sale as a home for himself and his family, he is entitled to possession of the land during the entire period of redemption. [Mont. Code Ann. § 25-13-821](#). The purchaser is entitled to receive rent from the debtor, however. [Mont. Code Ann. § 25-13-822](#).

## **Personal Property**

### **Notice Required prior to Sale.**

The Sheriff must post a notice of the time and place of sale in three public places in the county where the sale is to take place for not less than 5 days or more than 10 days, and by publishing a copy of the notice at least 1 week before the sale in a newspaper published in the county. Mont. Code Ann. § 25-13-701(b)

### **Sale of Property**

(1) All sales of property under execution must be made at auction to the highest bidder, between the hours of 9:00 a.m. and 5:00 p.m. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser or be interested in any purchase at such sale.

(2) When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and be sold in such parcels as are likely to bring the highest price. The judgment debtor, if present at the sale, may also direct the order in which property shall be sold, when such property consists of several known articles that can be sold to advantage separately, and the sheriff must follow such directions. [Mont. Code Ann. § 25-13-704](#).

### **Delivery of Property**

When the purchaser of any personal property capable of manual delivery pays the purchase price, the officer making the sale shall deliver to the purchaser the property and, if desired, execute and deliver to the purchaser a certificate of sale. The certificate conveys to the purchaser all rights that the debtor had in the property on the day the execution or attachment was levied. [Mont. Code Ann. § 25-13-708](#).

When the purchaser of any personal property not capable of manual delivery pays the purchase price, the officer making the sale shall execute and deliver to the purchaser a certificate of sale. The certificate conveys to the purchaser all rights that the debtor had in the property on the day the execution or attachment was levied. [Mont. Code Ann. § 25-13-709](#).

## **3.8 Exemptions from Execution.**

### **A. Exemptions without limitations.**

The following exemptions are total and these assets cannot be levied upon:

1. professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;
2. benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except for child support and maintenance;
3. veterans' benefits, except for child support and maintenance;
4. disability or illness benefits, except for child support and maintenance;
5. individual retirement accounts, as defined in [26 U.S.C. 408\(a\)](#), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in [26 U.S.C. 408A](#), to the extent of qualified contributions made before the suit resulting in judgment was filed, and the earnings on those contributions, except for child support and maintenance;
6. benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;
7. maintenance and child support; and
8. a burial plot for the judgment debtor and the debtor's family.

**B. Personal Property [Mont. Code Ann. §25-13-609](#).**

A judgment debtor is entitled to exemption from execution of the following:

1. the judgment debtor's interest, not to exceed \$4,500 in aggregate value, to the extent of a value not exceeding \$600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;
2. the judgment debtor's interest, not to exceed \$2,500 in value, in one motor vehicle;
3. the judgment debtor's interest, not to exceed \$3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and
4. the judgment debtor's interest, not to exceed \$4,000 in value, in any unmaturred life insurance contracts owned by the judgment debtor. [25-13-610](#).

**C. Tracing exempt personal property [Mont. Code Ann. § 25-13-610](#)**

If money or other property exempt under [25-13-608](#) and [25-13-609](#) has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, in a bank or savings account). Earnings exempt under [25-13-614](#) remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable (for example, in a bank or

savings account). Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

**D. Homestead [Mont. Code Ann. §§ 25-13-613; 70-32-101 et seq.](#)**

The homestead of a judgment debtor exempt from execution is provided for in Title 70, chapter 32.

**1. What is a homestead - [Mont. Code Ann. § 70-32-101.](#)**

The homestead consists of the dwelling house or mobile home, and all appurtenances, in which the debtor resides and the land, if any, on which the house or mobile home is situated.

**2. From whose property homestead may be selected - [Mont. Code Ann. §70-32-103.](#)**

If the debtor is married, the homestead may be selected from the property of either spouse. When the debtor is not married, the homestead may be selected from any of his or her property.

**3. Value of Homestead - [Mont. Code Ann. §70-32-104.](#)**

A homestead may not exceed in value \$250,000.00 In a proceeding instituted to determine the value of the homestead, the assessed value of the land with included appurtenances, if any, and of the house as appears on the last-completed assessment roll preceding the institution of the proceeding is prima facie evidence of the value of the property claimed as a homestead. If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, the claimant is limited to an exemption amount proportional to the claimant's undivided interest.

**4. Steps debtor must take to use the homestead exemption - [Mont. Code Ann. § 70-32-105.](#)**

The debtor selecting a homestead must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead and file the same for record with the county clerk and recorder. The declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises. The declaration must be recorded in the office of the county clerk of the county in which the land is situated.

**5. Appointment of appraisers if creditor feels property is worth more than \$250,000.00.**

If the judgment creditor feels the property is worth more than \$250,000.00, he can file a petition requesting that the judge appoint an appraiser to examine the property. [Mont. Code Ann. § 70-32-203.](#) He must give the judgment debtor at least 2 days notice of the hearing. After 15 days, the appraisers must report to the judge. If the land can be divided without material injury, the appraisers must set off as much of the land, including the principal residence, worth \$150,000.00 and a sale of the other may occur. If the land cannot be divided, it may then be sold whole.

**6. Payment of Proceeds to Debtor**

After the sale, the debtor will receive the \$250,000.00. This money remains protected from execution for a period of 18 months. [Mont. Code Ann. § 70-32-213](#).

**7. Tracing homestead proceeds - [Mont. Code Ann. § 70-32-216](#)**

If property or a part thereof that could have been claimed as an exempt homestead has been sold or taken by condemnation or has been lost, damaged, or destroyed and the owner has been indemnified for it, he is entitled for 18 months to exemption of the proceeds that are traceable. Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

**8. Debt collection licensing, bonding and other regulations.**

Montana is blissfully free from these matters. If an attorney is going to practice in Montana they need to pass the Montana bar; we do not offer reciprocity.

**9. Court costs**

Montana has two principal courts for debt collection. Justice Court for those matters under \$12,500.00 and District Court for matters over that limit.

	<u>Justice Court</u>	<u>District Court</u>
File Suit	\$35.00	\$120.00
Service of Sumons (appx) (varies depending on county, attempts, etc)	\$50.00	\$50.00
Default Judgment	\$0.00	\$45.00
Abstracting a Judgment		\$45.00
Writ of Execution	\$0.00	\$5.00
Service of Writ (appx) (varies depending on county, attempts, etc)	\$50.00	\$50.00
Filing a Foreign Judgment		\$95.00

*Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.*