



As a Judgment Creditor, how do you get from a Judgment Debtor the money owed to you? This article discusses methods used to recover debts after a judgment by the Court has been made.



A. DEBT RECOVERY AND ENFORCEMENT

If you have received orders from a Court or Tribunal in your favour, you are known as a Judgment Creditor. The person (or business) who owes the Judgment Creditor money is known as the Judgment Debtor. The next step would be to ensure that the orders made by the Court are complied with by the Judgment Debtor. Often, a judgment in itself does not guarantee immediate payment of debts.

A judgment can be enforced for a period of up to 12 years. If payment of the full debt is not made within 28 days of the judgment, interest will continue to be accrued at a rate set by the law until full payment of the debt has been received. Sometimes, an agreement may be reached between the parties whereby a Judgment Debtor pays the debt off by instalments. However, in the event that no payment is forthcoming from the Judgment Debtor, the following options would be available to the Judgment Creditor:

1. Application for an order for Examination (Examination Summons);
2. Garnishee Order;
3. Writs of Execution; and
4. Bankruptcy Action / Winding up order.

B. APPLICATION FOR AN ORDER FOR EXAMINATION (EXAMINATION SUMMONS)

Prior to deciding which mechanism to use to obtain payment, it would be useful to ascertain the financial situation of the judgment debtor.

An Examination Notice contains a number of questions regarding the financial standing of the Judgment Debtor. This examination notice must be first served on the Judgment Debtor by the Judgment Creditor. If the Judgment Debtor does not complete the Examination Notice within a reasonable amount of time (not less than 28 days), then an order of Examination can be applied for by the Judgment Creditor.

An application for an order of Examination (also known as an Examination Summons) results in the Judgment Debtor having to attend Court on a specific date and be examined as to their financial standing including details on income, expenditure and liabilities. Often the examination will be done informally by the lawyer for the Judgment Creditor. Formal proceedings (for example, questioning of the Judgment Debtor by a registrar of the Court) will only take place if the Judgment Debtor is uncooperative during informal investigation.

If the Judgment Debtor fails to turn up to Court at the allocated time for the examination, then this may result in a Warrant of Apprehension, which means that a Sheriff officer could bring the Debtor before the Court to be examined. In some cases, failure to comply with an order of examination may result in arrest.

C. GARNISHEE ORDER

A Garnishee order is an order on a third party to pay money that it owes to the Judgment Debtor to the Judgment Creditor instead. This third party must have a provable relationship with the Judgment Debtor.

The most common garnishee orders are:

- a. Garnishee order for wages and salary on the Judgment Debtor's employer; and
- b. Garnishee order on the Judgment Debtor's bank for funds in the Debtor's accounts.

The garnishee order is effective from the date of service of it on the third party. In cases where a garnishee order is made on the employer for wages or salary owed to the Judgment Debtor, there is a net weekly amount which must be kept by the garnishee for payment to the Judgment Debtor (for living expenses). Failure to comply with the garnishee order may result in the garnishee (the third party) being liable for the entire amount of the debt.



D. WRITS OF EXECUTION

A Writ of Execution is a Court order that allows the Sheriff of the court to seize and sell property belonging to the Judgment Debtor.

The Sheriff would be entitled to seize and sell the personal assets of the Judgment Debtor (including money, goods in which the Judgment Debtor has a beneficial interest and bonds or other securities).

Under the law, the Sheriff is not entitled to seize personal clothing, bedroom or kitchen furniture or tools of trade (less than \$2,000.00 in value).

The normal process for Writs of Execution involve applying to the Court for a Writ of Execution to be issued, followed by a Sheriff's officer attending at the Judgment Debtor's place of residence where the Debtor's goods may be found.

The Sheriff will ask the Judgment Debtor to pay the debt owing. If the debt is not paid, the Sheriff will proceed to make an inventory of the Judgment Debtor's goods (this process is known as seizure).

The Sheriff would then appoint a "custodian", who is to ensure that the goods are not removed from the Judgment Debtor's premises. However, the Sheriff has the power to remove the goods immediately.

Direct negotiations or agreements cannot be entered into between the Sheriff and the Judgment Debtor about the debt.

If the Judgment Debtor does not have any personal assets, the Sheriff could look towards a Writ of Execution against land. In order to proceed with this Writ to seize and sell the Judgment Debtor's land, the debt owed must be more than the jurisdictional limit of the Local Court Small Claims division.

This process would require the Judgment Debtor's consent and the Writ to be registered at the Land and Property Management Authority. Generally, this process is more technical and could take many months before the conclusion of the sale of land is finalised.

A Writ for the delivery of goods and a Writ for the possession of land are two less common Writs that the Judgment Creditor could possibly apply for.

E. BANKRUPTCY ACTION / WINDING UP ORDER

Bankruptcy is another avenue which a Judgment Creditor could consider using for debts over \$5,000.00 by an individual Judgment Debtor.

An application for a Bankruptcy Notice is to be made to the Insolvency and Trustee Service Australia and then personally served on the Judgment Debtor, who has 21 days to respond.

If there is a failure to respond, the Judgment Creditor could petition to the Federal Court or Federal Magistrates Court for a Bankruptcy Order. When the order is made, a trustee will take control of all the Judgment Debtors' assets with the view of paying all the creditors of the Judgment Debtor.

For corporations, the Judgment Creditor can apply to the Court for a winding up order.

Comasters can help clients to enforce court judgments.

© Comasters April 2011 **Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

CONTACT US

Jeffrey T Lee Principal Lawyer
Pauline A Beausoleil Senior Associate Lawyer
Valerie Cortes Senior Paralegal
Lauren Choy Paralegal
Carissa Widjaja Paralegal

Comasters Law Firm and Notary Public
Suite 101, Level 1, Capitol Terrace
743-755 George Street
Sydney NSW 2000, Australia

T +612 9288 0300
F +612 9288 0399
E comasters@comasters.com.au
www.comasters.com.au