

Factsheet No. 25

Enforcement of a judgement debt



This Factsheet looks at the rights you have to enforce a judgment debt.

- What is a judgment debt?
- How long does the judgment debtor have to pay the judgment debt?
- What happens if the judgment debtor wants to pay the debt by instalments?
- What are my options if the judgment debtor does not pay?
- Garnishee Order
- Writ for Levy of Property

What is a judgment debt?

If you have an order of a Court or Tribunal against a judgment debtor requiring them to pay money, it is called a "judgment debt". Judgment debts can be enforced for 12 years after the date of the judgment in NSW.

Generally, you should seek legal advice before seeking to enforce a judgment debt.

How long does the judgment debtor have to pay the judgment debt?

Usually, the judgment debtor is given 28 days to pay the judgment debt. Interest will be charged on any unpaid judgment debt. As at 1 July 2016 the post-judgment interest rate is 7.75% per year.

What happens if the judgment debtor wants to pay the debt by instalments?

The judgment debtor may approach you directly or apply to the Court to pay by instalments. If the debt is to be paid by instalments you are not able to enforce the judgment debt, unless the judgment debtor defaults by not paying one or more of the instalments.

If you are happy for the judgment debtor to pay by instalments you need to write this down on Form 44 – "Consent Judgment/Order".

If you don't agree to the payment by instalments, and the judgment debtor makes an application to the

Court, you can make an objection. You have 14 days to object to the instalment offer with the Court. To file an objection you need to complete Form 50 - "Objection to Instalment Order". You are not able to enforce the judgment debt until the Court has made a decision about the instalment application.

What are my options if the judgment debtor does not pay?

There are a few enforcement options available to you:

1. Garnishee Order; or
2. Writ of Levy of Property.

Garnishee Order

A garnishee order is an order by the Court to allow you to recover the judgment debt from any of the following:

- the debtor's wages;
- the debtor's bank account/s; or
- people who owe money to the debtor.

Step 1: Do you have enough information?

Before you can seek a garnishee order you need to have some information about the judgment debtor. For example, if you are seeking to garnishee (take) money from the judgment debtor's bank account, do you know their bank account or what institution they bank with or if there are funds in the bank account to repay the debt?

To find out information about the judgment debtor's financial circumstances, especially where the judgment debtor is refusing to provide any information to you, is to issue the judgment debtor with an Examination Notice.

The Examination Notice requires the debtor to answer questions on their income, assets and liabilities. You can also request that the debtor

provide you with certain documents such as a bank statement or a payslip.

To issue an Examination Notice you need to complete Court [Form 51](#) for an individual or [Form 52](#) for a corporation and post this to the debtor. There is no cost associated with issuing the Examination Notice.

Step 2: What happens if the debtor does not respond to the Examination Notice?

If the debtor does not respond or adequately respond to the Examination Notice you can file [Form 53](#) - "Notice of Motion Examination Order" and [Form 54](#) - "Examination Order".

Form 53 requires you to complete an affidavit at the bottom of the Form. In this affidavit you need to set out any payments paid by the debtor and how much of the judgment debt is still owing. You can include the costs to issue the order, such as the filing fee or any service fees you may have paid as well as any interest payable on the judgment debt.

You need to file these Forms with the Court, which costs approximately \$80 for an individual and \$160 for a corporation.

The Examination Order must be personally served on the debtor at least 14 days before the matter is listed in Court. You will also need an affidavit of service ([Form 41](#) - "Affidavit of Service") to say that the debtor did receive the Examination Order.

On the day of the Examination you or a qualified representative instructed by you, such as a barrister or solicitor are required to put the questions to the judgment debtor. You should ask them questions about their income, assets, debts, bank accounts and financial circumstances generally. You can also ask for documents listed on the Examination Order such as bank statements or payslips. This is the information which you will use to decide the best way to enforce the judgment debt.

If the judgment debtor doesn't show up for the examination, the Court will send out a notice with the new date and time of the examination. If this happens again, the Court may issue a notice to the judgment debtor stating that failure to attend examination may result in their arrest. After this notice is issued the judgment debtor has 14 days to respond to the Court.

If no response is provided you may apply for a warrant to be issued for the arrest of the judgment debtor ([Form 57](#) - "Notice of Motion Arrest Warrant for Examination").

Step 3: Now you have the information, what do you do with it?

From the information obtained you need to decide what is the best way to obtain the judgment debt from the judgment debtor.

Garnishee Order for Wages or Salary

This is an order addressed to the employer of the judgment debtor to take an amount of money from the judgment debtor's wage and pay it to you until the whole judgment debt is paid off. There are restrictions on the amount that can be deducted from wages.

You will need to complete [Form 69](#) - "Notice of Motion - Garnishee Order" and [Form 71](#) - "Garnishee Order for Wages or Salary". Three copies of these forms need to be filed with the Court. There is no filing fee. The Court will give you a stamped copy of the Form, which you need to send or take to the employer of the judgment debtor.

Garnishee Order for Debts

Where the judgment debtor has funds in a bank account with a financial institution you may apply to this institution for the judgment debt to be garnisheed from their bank account.

You will need to complete [Form 69](#) - "Notice of Motion - Garnishee Order" and [Form 70](#) "Garnishee Order for Debts". You need to file three copies of both Forms with the Court. There is no filing fee. The Court will give you a stamped copy of the Form, which you need to send or take to the institution.

You do not have to give a copy of the Form to the judgment debtor.

Writ for Levy of Property

Where the judgment debtor owns property, you can make an application to the Court for the Sheriff to take and sell the judgment debtor's property at auction to pay the judgment debt owed to you.

The property which can be taken is limited to items that belong to the debtor. There are also some items that cannot be taken, including: items that are rented

or hired; essential household furniture and appliances, clothing; and items which the debtor uses to earn a living.

You need to complete Form 65 "Notice of Motion – Writ for the Levy of Property" and Form 66 "Writ for the Levy of Property". Three copies of the Forms needs to be filed with the Court and there is no filing fee.

The Court will issue the writ without you or the judgment debtor having to attend court and the writ will be sent to the Sheriff's Office. Once issued the writ is valid for 12 months.

The Sheriff charges approximately \$80 each time they attend the address of the judgment debtor to remove property and takes 3% of the money made from auctioning the seized goods.

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This factsheet is a guide to the law in New South Wales, Australia. It is not a substitute for legal advice. If you have a legal problem seek legal advice from your local community legal centre.

