

Factsheet No. 7

I have a judgment debt against me but can't pay?



This Factsheet discusses your rights and obligations when you have to pay a judgment debt.

- What is a judgment debt?
- How long do I have to pay the debt?
- Paying the debt by instalments
- What happens if I don't do anything?
- Garnishee Order
- Writ of Levy of Property
- What happens if I am unable to pay the debt?

What is a judgment debt?

If there is an order of a Court or Tribunal against you requiring you 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 if someone is seeking to enforce a judgment debt against you.

How long do I have to pay the debt?

Usually, you are 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.

Paying the debt by instalments

If you cannot afford to pay the judgment debt as a lump sum and want to avoid enforcement action against you, there are two options:

1. agree with the judgment creditor to pay the debt in instalments; or
2. make an application to the court to pay the judgment debt by instalments.

Where you agree with the judgment creditor to pay by instalments you need to write this down on Court Form 44 – "Consent Judgment/Order." This Form is available at the Local Court or the Court Website.

If you are unable to reach an agreement with the judgment creditor you can make an application to the Court by completing Form 46 - "Notice of Motion to Pay by Instalments" if you are an individual; or Form 47 if you are a corporation. The Form can be handwritten.

You will need specific information to complete the Form including:

- (a) the case number and the parties' details, which can be found on the statement of claim;
- (b) your income and assets, such as any bank accounts, house, car, or property that you might own;
- (c) your expenses such as rent, mortgage, food, household bills, car or transport expenses, insurance, childcare, etc;
- (d) any other debts or repayments you need to meet; and
- (e) what instalments you propose to pay.

Once you have signed the Form you need to take or post the Form to the Court. Your application will be considered by the Court Registrar who will send you a letter notifying you of the result.

If you are not satisfied with the result, you have the option of filing, within 14 days, Form 50 - "Notice of Motion Objection to Order refusing Instalment Application" with the Court.

What happens if I don't do anything?

There are a number of different ways in which the judgment debt could be enforced against you. These include by way of Garnishee Order or by Writ of Levy of Property.

The judgment creditor can serve you with an "Examination Notice", as a means of finding out more about your financial circumstances. This is a Court Form that requires you to fill in details about your income, assets, debts and expenses. The judgment

creditor can also request that you provide them with documents such as bank statements. You have 28 days to respond to the Examination Notice.

If you fail to respond to the Examination Notice the judgment creditor can issue you with an Examination Order, which is an order requiring you to attend Court to answer questions about your assets, income and debts.

If you fail to attend Court in accordance with the Examination Order you will be in contempt of Court and a warrant for your arrest can be issued.

Garnishee Order

A judgment creditor can issue a Garnishee Order on the basis of the information the judgment creditor has obtained about your financial situation. This is an order that can result in a deduction from your bank account or your wages for the judgment debt amount that is owing. The judgment creditor does not have to notify you of this order.

Writ of Levy of Property

A Writ of Levy of Property is another option for enforcement which may be available to the judgment creditor. This is an order from the Court to the Sheriff to take and sell, at auction, property belonging to you. The money made from the auction of the items will be provided to the judgment creditor to pay or pay down the judgment debt.

This order is valid for 12 months and you may not receive notice that the Sheriff is coming to your property.

The Sheriff is permitted to attend your property on multiple occasions until the judgment debt is satisfied.

If there is money left over after the property is sold and the debt is repaid, the money will be returned to you.

You should seek legal advice immediately if someone is threatening to take your goods or has already done so.

What property can be taken?

The Sheriff cannot take something that belongs to another member of the household; anything rented or hired; or anything that is not paid off because it is used as security for a loan.

If the Sheriff or Bailiff tries to take something that is not yours, you might be required to prove you don't own the item. This could require you to show receipts. If the item is jointly owned the item can be taken and your share of the item can be used as payment towards the debt.

The Sheriff cannot take basic living equipment, which includes items such as pots, pans, blankets, beds or refrigerators. In addition, the Sheriff cannot take property that you or other household members use to earn a living (however, there are some exceptions to this depending on the value of the item).

Do I have to let the Sheriff into my house?

No. The Sheriff is not allowed to force his or her way into your house and you can refuse entry, but you should do so politely. Assaulting or obstructing a Sheriff is an offence and you could be fined or imprisoned, if you are, for example, found guilty of assaulting a Sheriff.

The Sheriff can enter through an unlocked door without your permission. The Sheriff can also force his or her way into buildings other than your house such as a garage or shed.

What are my options when the Sheriff comes to my house?

- (a) If you did not know about the judgment against you – you can apply to have the judgment set aside.
- (b) Make an instalment application with the court (see earlier section on "Paying the debt by instalments") as this will stay any enforcement action against you.

Is the amount stated on the writ correct?

You should check the amount which is claimed in the Writ of Levy of Property is the amount you owe under the judgment debt. If you disagree with the outstanding amount you can ask the Court to urgently hear the matter.

What happens if I am unable to pay the debt?

If the debt is greater than \$5000 the person to whom you owe the money can start proceedings to bankrupt you. You can also seek to become a bankrupt voluntarily but you should seek legal or financial advice from a lawyer or Financial Counsellor before making

any decision to do so.

Produced by Redfern Legal Centre in September 2016.

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.

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