



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 122

How can a creditor enforce a court judgment against me?

This information sheet details what a creditor can do to enforce a judgment in their favour.

If you have breached a credit contract and are in debt, the creditor to whom you owe money can get a court judgment against you.

The court judgment

Which court will the case be heard in?

The court in which a creditor chooses to sue you (the debtor) will depend on the **type of debt or the amount owed**.

There are certain **maximum amounts** that different courts can adjudicate or award damages for:

Court	Maximum amount
Magistrates' Court	\$100 000
County Court	Unlimited
Supreme Court	Unlimited

Only the County and Supreme Courts can decide disputes about **title and repossession of land**.

What should I do if I am served with a summons?

If you are served with a summons, you have several options:

- if the debt is not disputed, **pay it**
- if you are unable to pay the full amount, try to **negotiate** with the creditor—a financial counsellor may be able to help with this
- if you dispute the debt, **seek legal advice**, lodge a notice of defence and defend the action.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

How can a creditor enforce a judgment?

There are several ways a creditor can enforce a judgment. They include:

- by **instalment**—by consent or court order
- warrant to **seize property**
- warrant of **seizure and sale**
- attachment of **earnings**
- attachment of **debt**
- summons for **oral examination**.

Paying by instalments

If a court order is made against you for a sum that you are unable to pay in full, you can apply for an instalment order which will allow you to repay the debt by making smaller payments.

This allows you to pay a **fixed amount at a fixed time**. Where such an order has been made and you comply with it, the judgment creditor cannot take any other action against you.

If you have filed an application for an instalment order with the court before you are served with a bankruptcy notice, the application will make the bankruptcy notice void.

Sometimes a judgment creditor will apply to have an instalment order made against you. If you are on a social security benefit, this cannot be done without your consent.

Warrant to seize property

This type of warrant is used by the Sheriff to **seize your personal property that is then sold** to pay the judgment debt. The Sheriff may allow you time to get the money or negotiate with the judgment creditor or apply for an instalment order.

You are entitled to refuse the Sheriff entry to your property and a Sheriff is not entitled to forcibly enter the house to carry out the warrant.

At law, some goods are protected. The Sheriff cannot seize:

- property used by you primarily as a **means of transport** up to the value of \$6700 (indexed annually)
- property used to **earn your income**
- household property reasonably **necessary for domestic use** in your household.

Warrant of seizure and sale

If you own land, a creditor may issue a warrant of seizure and sale to try to force you to **sell the land to pay the judgment debt**.

Real estate can only be taken if the warrant has been issued out of the Supreme Court or County Court. It will be important to **seek urgent legal advice if your house and land is threatened in this way**.

Attachment of earnings

If you are in paid employment, a creditor can use the attachment of earnings procedure to enforce a judgment debt. The creditor can apply to the court for an order that your employer **deduct instalments from your salary** each payday and pay the money to your creditor. For further information **contact a financial counsellor or community legal service**.

Attachment of debt

This procedure can be used **if you are owed money by someone else**. The judgment creditor can apply to the court for an order that **the debt owed to you be paid direct to them**. An

attachment of debt is also known as a **garnishee order**. It is important to **seek legal advice as to what money can be attached**.

Summons for oral examination

This type of summons is used to get you to court so you can be **examined about your financial circumstances** under oath. If you do not attend court on the date set, a **warrant of apprehension may be issued**, which could lead to a visit from the police.

For further information contact a financial counsellor or legal advisor.

Where can I get more information?

- See also Information Sheet 115 *Referrals: where to go for help with your debts*.
- Go to www.asic.gov.au/credit for the latest updates about credit.
- Go to www.fido.gov.au/credit for credit information and resources for consumers.
- Contact ASIC's infoline on 1300 300 630 or make an enquiry at www.asic.gov.au/question.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.