

## 2. Seizing the debtor's goods

A **Warrant of Seizure and Sale** can be issued by the Registrar at the request of a creditor. The warrant is issued to a bailiff. It gives the bailiff the power to take possession of and sell a debtor's goods so that enough money can be made to pay the debt, plus any costs and interest that have become due. The bailiff will generally explain this process in person during a visit to the debtor's home. Only personal property belonging to the debtor can be taken. This includes items such as money, furniture, television sets, electrical appliances and cars. The debtor is entitled to keep essential goods needed for adequate living and the continuation of work such as clothing and tools of trade. Items which are rented or on hire purchase and items jointly or independently owned by the debtor's spouse or relatives cannot be taken.

A bailiff can "seize" goods without actually picking them up and taking them away. Often it is convenient to leave them at the debtor's house while a sale is arranged. In such circumstances, the bailiff must leave a **Notice of Seizure**, listing the items seized in a prominent position on either the goods themselves or on the land on which they were seized.

Property which is seized must be advertised for sale in a local newspaper and either sold at public auction or by tender but the debtor can regain his goods by paying the bailiff the amount being claimed at any time between when the goods are seized and before being sold. However, the debtor must pay the cost of seizing, advertising and arranging the sale on top of the judgment debt.

If the debtor has little or no property with which to pay the debt, the warrant will remain in force for 12 months from the date of issue, during which time the creditor may apply to the bailiff to make a further attempt at execution.

A warrant may authorise a bailiff to sell land belonging to the judgement debtor. Special procedures must be followed before a bailiff can advertise land for sale.

### What can a Debtor do?

A debtor should not be frightened into hasty arrangements for payment that he or she cannot afford. If the debtor does owe the money claimed under a warrant by a bailiff, he/she should immediately seek an **Instalment Order**. This will prevent the bailiff from

seizing the debtor's goods or issuing an examination summons for as long as payments are made.

A debtor who either does not owe the money or believes the amount is wrong should ask the bailiff to delay a few days while they contact the creditor to check the facts. If the bailiff will not cooperate, the debtor can apply to the Court for a stay of enforcement.

## 3. Attachment of earnings

If the debtor is employed, a creditor can apply for an **Attachment of Earnings Order**. This is an order that the debtor's employer make payments to the creditor out of the debtor's earnings. If the Court decides to make such an order, it will determine the amount which is reasonable to be paid out of the debtor's earnings and will specify in any order the amount that the debtor needs to meet living expenses. This is known as the **protected earnings rate**.

## 4. What if the debtor cannot pay directly but is owed money by someone else?

In such circumstances, a creditor can apply for a **Garnishee Order**. This is an order to a third person (called a "garnishee") who owes money to a debtor, instructing him/her to pay that money direct to the creditor. A creditor who knows that money is owed to the debtor (for example by a bank or tenant) can apply for a Garnishee Order for the "attachment" of as much of that money as is needed to pay the amount owing to the creditor under the judgment debt. To obtain a Garnishee Order, the creditor must apply to the Registrar of the

### For further information on small claims

#### Contact the nearest Local Court office:

Cnr Cavenagh & Harry Chan Ave, DARWIN	8999 6298
Court House, First Street, KATHERINE	8973 8959
Law Courts, Parsons St, ALICE SPRINGS	8951 5710
Court House, Paterson St, TENNANT CK	8962 4377
Court House, NHULUNBUY	8987 1378

#### See other brochures in this series:

<b>SMALL CLAIMS 1:</b>	Making a Small Claim
<b>SMALL CLAIMS 2:</b>	Defending a Small Claim
<b>SMALL CLAIMS 3:</b>	Pre-Hearing Conferences and Attending Court.

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Court in which the judgment was made.

# SMALL CLAIMS 4

## Enforcing Judgment against Debtors



The Northern Territory of Australia  
Department of Justice

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## Enforcing judgment

This brochure is intended to provide general information to judgment creditors and judgment debtors in small claims matters about the processes which can be used to enforce judgments for sums of money. For information about enforcing other Court orders or judgments, see a solicitor or the Court staff for advice.

**Reading this brochure carefully can save you time and money.**

## After the Court hearing

If a plaintiff (or creditor) obtains a judgment against a defendant (or debtor) for a sum of money, the amount which the Court has ordered the debtor to pay (the judgment debt) is payable immediately.

Where the debtor does not or cannot pay this amount straight away, the creditor can use various Court processes to enforce the judgment and make the debtor pay. If the creditor does this, he/she can add the costs of enforcing the judgment to the judgment debt and the debtor must pay these too.

It is obviously in the debtor's best interest to pay the whole amount as soon as possible to avoid this.

### 1. Orders for payments by instalments

#### *When can an order be made?*

An **Instalment Order** may have been made at the hearing. If not, a debtor who is unable to pay the full amount at once can obtain an Instalment Order by agreement with the creditor or can apply to the Court at any time after the hearing.

#### *Agreeing to pay by instalments*

If both debtor and creditor agree on instalment terms, an **Instalment Agreement** should be completed with agreed terms and both parties' signatures should be witnessed. The form should be filed in the Local Court within 7 days of being signed by the creditor.

The Registrar will then make an order in the same terms as the agreement.

#### *Where there is no agreement:*

The debtor must file an **Application for Order for Payment of Judgment Debt by Instalments** and **Judgment Debtor's declaration of Financial Situation** in the Court. Copies of these documents must also be served on the creditor. These forms are available from the Local Court.

The Registrar will set a time to consider the debtor's application and any objections from the creditor.

The Registrar may refuse an application where the debtor has proposed instalments at a level which is too low in view of his/her income and outgoings, or disclosed insufficient financial information in his/her affidavit to justify instalments at that level.

The Court will notify the creditor of the Registrar's decision.

### What if a party disagrees with the Registrar's order?

Whether you are the debtor or the creditor, if you disagree with the Registrar's decision you can apply to the Court (by filing a **Notice of Objection** in the Court and an affidavit stating the reasons for objection) for the matter to be heard by a Magistrate or Judicial Registrar who can assess the terms suggested by the debtor, vary them and grant or refuse an **Instalment Order**. You must apply to the Court within 14 days of being notified of the Registrar's order.

The Court will notify you of a hearing date.

### What if the debtor's financial circumstances change?

If your circumstances change and you are unable to meet the terms of an Instalment Order, whether they were reached by agreement or not, you can apply for a new order. You must file an **Application for Variation or Cancellation of Order for Payment of Judgment Debt by Instalments** and a fresh **Judgment Debtor's Declaration of Financial Circumstances**. Copies must be served on the creditor.

If a creditor believes that there has been a substantial increase in a debtor's property or means, he/she can also apply for a variation of the Instalment Order.

### What if the debtor cannot pay the full amount but will not apply for an instalment order?

A creditor can also apply for an **Examination Summons** to be issued against the debtor. An Examination Summons requires the debtor to attend a hearing at which he/she will be examined by the creditor, or a lawyer, or the Registrar, about his/her financial situation and the matters relevant to his/her ability to pay the debt. The Debtor will be required to complete a Declaration of financial circumstances and to file a copy of this with the Court and serve a copy on the creditor.

Such hearings are often brief, but the debtor must come prepared with any books or papers listed in the summons together with an itemised list of income and weekly costs such as rent, food, child care, medical and other expenses. It is also advisable for the debtor to have a reasonable and workable proposal for payment by instalments. Where part of the judgment debt has already been paid, the debtor should bring the relevant receipts.

The debtor will be examined on oath and may be questioned without the Registrar being present. If a debtor has not been examined in the fortnight allowed in the summons and appears to be avoiding examination, the creditor can apply to the Court for a **Warrant of Arrest on Disobedience to Summons**, to have the debtor arrested by a private bailiff in order to have him/her brought for examination before the Court.

**A debtor cannot be fined, imprisoned or arrested for non-payment of a debt.**