

ENFORCING JUDGMENTS

What Happens After You Win A Court Case?

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Tasty Co., a catering company, sued a client for payment of unpaid bills for its services. The court decided in Tasty's favour, stating that the client must pay Tasty the full amount owing, plus court costs. Three months after the judgment, Tasty has yet to see a penny of the money. What can it do?

Since a lawsuit can often be highly stressful, expensive and drawn out, it is important to assess the likelihood of recovering money before even beginning a lawsuit. Even if a party is successful at trial (the judgment creditor) and obtains a monetary judgment, there is no guarantee that the opposing party (the judgment debtor) will abide by the court order. If the judgment debtor does not pay, there are three main mechanisms for enforcing judgments:

1. examination in aid of execution;
2. writ of seizure and sale of debtor's real property, and
3. garnishment of monies owed to the debtor, such as wages and bank accounts.

Examination in Aid of Execution

A judgment creditor is entitled to question the judgment debtor under oath. This process is called a judgment-debtor examination. At the examination, the judgment creditor may ask questions about the judgment debtor's financial standing and means of repaying the judgment debt. In such examinations, information about the judgment debtor's bank accounts, employer, the location of the judgment debtor's assets, or other sources of income for the judgment debtor can be obtained. With this information, the judgment creditor can pursue other means of enforcement such as writs or garnishment as described below. An examination in aid of execution against a debtor can generally be conducted only once a year.

Writ of Seizure and Sale

A writ is a document issued by the court that effectively liens a judgment debtor's real estate within each jurisdiction—a regional municipality or county—where it is filed. If the judgment debtor has property in various different jurisdictions, separate writs have to be filed in each. A writ must be renewed every six years. In the example above, if Tasty's client owns real estate, Tasty could obtain a writ and file it in the jurisdiction where the real estate is located.



Once filed, the writ binds the judgment debtor's real estate in that jurisdiction. If a judgment debtor attempts to sell that real estate, the writ search that the purchaser will perform will reveal the writ and the sale will not take place until the writ has been paid.

Garnishment

Garnishment is a mechanism that allows a judgment creditor to collect its debt from a third party who owes payment to the judgment debtor. Examples would include wages owed by an employer and monies in bank accounts. In the above example, Tasty might be able to garnish its client's bank accounts for payment.

Garnishment is an effective tool in enforcing a judgment if done properly and with the correct information. Once served with the appropriate documents by the judgment creditor, the third party (the garnishee) is required to pay into court any amounts it owes to the judgment debtor. These amounts are then paid out to the judgment creditor. The garnishee cannot ignore the garnishment and must file its response with the court.

Conclusion

Each case must be carefully assessed to determine the most effective and efficient method of enforcement. Lawrences has significant experience in enforcing judgments and has collected millions of dollars on behalf of our clients.



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