

**MAGISTRATES COURT OF WESTERN AUSTRALIA
CIVIL JURISDICTION
FACT SHEET 27**

**PROPERTY (SEIZURE AND SALE) ORDER
INFORMATION FOR THE JUDGMENT CREDITOR**

The parties

Judgment creditor

The person entitled to benefit from a monetary judgment.

Judgment debtor

The person against whom a monetary judgment has been given or may be enforced.

Bailiff

An authorised officer of the Sheriff of Western Australia who serves court documents and seizes and sells the judgment debtor's real or personal property.

Judgment debt

The unpaid amount of any of the following:

- a) judgment sum;
- b) interest on the judgment sum; or
- c) enforcement costs of the judgment.

What is a property (seizure & sale) order

A property (seizure & sale) order authorises a bailiff to seize and sell as much of the judgment debtor's real or personal property as necessary to satisfy the judgment debt wholly or partially.

How a judgment creditor applies for a property (seizure & sale) order

Complete and lodge **Form 6**. You will also need to pay fees for making the application, which include the bailiff's enforcement fees.

Enforcing a property (seizure & sale) order

Can only be enforced by a bailiff.

Relationship between the bailiff and the judgment creditor

You need to instruct the bailiff to enforce the judgment by applying for the property (seizure & sale) order.

At any time you can instruct the bailiff to stop enforcement and return the order to court.

How long does a property (seizure & sale) order last?

Otherwise, the control of the enforcement process is in the hands of the bailiff and you need to respond to all requests from the bailiff.

The property (seizure & sale) order is effective for 12 months after the day on which it is made or issued.

To extend the order, you must apply to the court before the order expires. Complete and lodge **Form 7 and supporting affidavit**.

What property cannot be seized?

The following **personal property** cannot be seized or sold:

- Wearing apparel of the judgment debtor to the value of \$1,250.
- Wearing apparel of a dependant of the judgment debtor to the value of \$1,250.
- Family diaries, photographs and portraits.
- Medical and dental aids and equipment.
- Kitchen, dining furniture and implements up to a value of \$1,250.
- Bedroom furniture and bedding up to a value of \$500.
- Bedroom furniture and bedding of the judgment debtor's dependents up to a value of \$200.
- Laundry equipment up to a value of \$200.
- Electrical goods used for family entertainment to a value of \$300.
- Ordinary tools of trade, plant and equipment, professional instruments and reference books to the value of \$2,500, which are used by the judgment debtor to earn income by personal exertion.

A judgment debtor's saleable interest in any real estate property must not be sold unless the bailiff is satisfied that the sale of personal property will not be sufficient to satisfy the judgment.

This does not prevent you making an application to have both personal and real property being sold at the same time.

A bailiff will do the following with the judgment debtor's personal property until it is sold:

- 1) Leave the property with the judgment debtor for safekeeping. This enables the judgment debtor to continue to use the property. The property must not be moved without the prior consent of the bailiff. Custody or possession of the property must not be given to another person without the prior consent of the bailiff; or

- 2) After seizure, remove the property and arrange storage at another location.

Unless the judgment debt has been paid, including all enforcement costs and interest, the bailiff will then sell the property.

It is a criminal offence to hinder or defeat the seizure of goods by removing, concealing or disposing of the seized goods. If a judgment debtor does so, they may be imprisoned for up to three years or fined \$4000.

The judgment debtor's options

If a judgment debtor does not want their property seized and sold by the bailiff they can:

Pay the debt

The fastest, cheapest and simplest way to stop the bailiff selling property is to pay the debt and costs in full.

Enter into an arrangement

If you and the judgment debtor make arrangements for payment of the debt, you need to instruct the bailiff to return the property (seizure & sale) order to the court.

NB: Before making arrangements, all outstanding bailiff's costs must be paid.

How does the judgment debtor apply to have enforcement suspended?

An application for enforcement to be suspended must be made to the court registry where the judgment was given.

The court can only make a suspension order if it is satisfied that the judgment debtor is unable to pay the judgment debt or there are special circumstances that justify doing so.

What is an interpleader application?

When another person claims the property seized by the bailiff belongs to them and not to the judgment debtor.

**See Fact Sheet:
No. 29 Interpleader proceedings**

This is a guide only. The content is subject to change. If you are unsure about any of the information in this fact sheet, contact your nearest registry or seek legal advice.