



Magistrates Court of Western Australia

Civil Jurisdiction

Fact Sheet 27 – Property (seizure and sale) Order

Application by 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:

- judgment sum;
- interest on the judgment sum; or
- costs of enforcing the judgment, including additional bailiff costs of which the Court may not be aware.

What is a property (seizure & sale order) 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 – Application or Request to A Court** and pay the prescribed fee, which includes the bailiff's enforcement fees. Enforcement fees may vary based upon various factors including the number of enforcement attempts made and the distance travelled to execute the enforcement process. Please refer to the Civil Judgment Enforcement Regulations 2005 for the full list of fees.

This form is available from the Magistrates Court website:

www.magistratescourt.wa.gov.au.

Enforcing a property (seizure & sale) order

Can only be enforced by the Sheriff or a Bailiff appointed by the Sheriff.

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. Upon lodgement of the application the Court will send the order to the Bailiff for execution.

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

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. Should you not respond to a request from the bailiff the order may be returned to the Court.

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

The property (seizure & sale) order is effective for **12 months** from the date the order is made.

A property (seizure & sale) order for real property is effective for 12 months, however the saleable period is 6 months. The judgment creditor must register the PSSO with Landgate for the 6 month period to commence.

To extend the PSSO, you must apply to the Court before the order expires.

Complete and lodge **Form 7 – Application** and supporting **Form 2 – General Form of Affidavits**.

To extend the saleable period of the PSSO, you must apply to the Court before the order expires.

Complete and lodge **Form 23 – Application** and supporting **Form 2 – General Form of Affidavit**.

These forms are available from the Magistrates Court website:

www.magistratescourt.wa.gov.au.

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.
- Books, software, computers and other equipment, used by a dependant of the judgment debtor for educational purposes to the value of \$3,000.
- 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. You should include an address in your application at which the bailiff may be able to seize personal property.

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:

- Leave the property with the judgment debtor for safekeeping. This enables the judgment debtor to continue to use the property.
 - i. The property must not be moved without the prior consent of the bailiff;
 - ii. Custody or possession of the property must not be given to another person without the prior consent of the bailiff; or
- 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 12 months and fined \$12,000.

The judgment debtors 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 bailiffs' costs must be paid.**

How does the judgment debtor apply to have enforcement suspended?

An application for enforcement to be suspended must be lodged with 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.