

COLLECTING ON YOUR SMALL CLAIMS JUDGMENT

This pamphlet contains information for plaintiffs who have received a judgment in their favor in small claims court, but the defendant has not *satisfied* the judgment - the defendant has not paid the amount of money stated in the judgment, or has not returned the personal property described in the judgment.

Once a judgment is entered in your favor, the defendant is required to promptly pay you the amount of money stated in the judgment, and promptly return to you the personal property described in the judgment. *The defendant does not make the payment to the court, and the court will not collect on the judgment for you.*

If the defendant does not satisfy the judgment, there are ways you can collect on the judgment - called *execution on the judgment*. You can, and in most cases you should, talk to the defendant to try to get the judgment satisfied before you start the execution process.

This pamphlet will take you through the steps you must follow if you want to execute on your small claims judgment. *It is very important that you read this information carefully.* In some counties, the court clerk, a court assistance officer, or the sheriff's office can give you forms for the papers you will need to file, but they cannot tell you how to complete the papers, and they cannot give you legal advice. IF YOU NEED MORE INFORMATION, YOU SHOULD TALK TO A LAWYER.

When Execution Can Begin

If the judgment is a *default* judgment, you can execute on the judgment immediately after the judgment is entered. (A default judgment is a judgment that was entered when the defendant failed to appear to contest the claim. The judgment will say if it is a default judgment.)

If the judgment is not a default judgment, you must wait until the 30-day appeal period is over. If no appeal is filed, you can execute on the judgment immediately after the appeal period is over.

If an appeal is filed, you cannot execute on the judgment that was issued in small claims court -- but if you get a judgment in your favor on appeal, you can execute on the judgment on appeal.

Types of Execution

The most common ways to execute on a judgment are to *garnish wages*, or to *attach personal property*. There is more information about how to garnish the defendant's wages, or to attach the defendant's personal property, in this pamphlet.

You can also file a *judgment lien* against the defendant's real property, and *foreclose* on the lien. Real property is land and buildings; foreclosure is the process for selling the property to pay the judgment lien. The procedures for liens and foreclosures are too complicated to briefly explain them in this pamphlet. If you want to file a lien against the defendant's real property, you should talk to a lawyer to get more information.

Garnishing Wages

When the defendant's wages are garnished, the defendant's employer keeps part of the defendant's paycheck and pays the money to the sheriff, who then pays the money to you.

If you want to garnish the defendant's wages, you must ask the court clerk (in the county where your case was heard) for a certified copy of the judgment. You must also prepare an "Application and Affidavit for Writ of Continuing Garnishment." You can get a form from the court clerk for the application. The application must be typewritten or printed in black ink. It must include the same *caption* as your judgment (the names of the plaintiffs and defendants and the case number).

You can ask the sheriff's office to collect *judgment interest* by including this on your writ. Judgment interest is the amount of interest that has accrued since the date the judgment was entered, at the *legal rate* (the interest rate established by law at the time your judgment was entered). The court clerk can tell you what the legal interest rate is. Neither the court clerk's office nor the sheriff's office will calculate the amount of accrued interest for you.

The application must include the amount of any payments you have already received on the judgment. You must sign the application in front of a notary or a court clerk. If you sign it in front of a notary, the notary must sign and seal the application.

You must file the completed application with the court clerk, along with the certified copy of the judgment. You must then ask the court clerk for a "Writ of Continuing Garnishment." You will be

required to pay the court clerk a \$2 fee. The clerk's fee will be added to the amount the sheriff is to collect. The court clerk will give you the papers to take to the sheriff's office.

You must take the papers to the sheriff's office *in the county where the defendant's employer is located*. When you file the papers at the sheriff's office, you will be required to pay a fee. The sheriff's fee will be added to the amount the sheriff is to collect. You will need to provide the sheriff's office with written instructions. In most counties you can get a form from the sheriff's office. The instructions must be typewritten or printed in black ink. The instructions must include the name and address of the defendant's employer.

The sheriff will serve the papers on the defendant. The defendant can avoid the garnishment by paying the sheriff the amount of money the defendant owes you. The sheriff will also serve the papers on the defendant's employer. The defendant's employer is required to withhold a portion of the defendant's wages, and pay the money to the sheriff. The sheriff will pay the money the sheriff gets from the defendant's employer over to you unless the defendant files a *claim of exemption*. There is more information about exemptions later in this pamphlet.

Attaching Personal Property

When personal property is attached, the sheriff takes the personal property, which is also called *seizing* the property. Personal property is anything other than land or buildings. Sources of money are usually the most convenient types of property to attach, because the sheriff can simply pay the money over to you. The sheriff can take other types of personal property, sell them at auction, and pay you the proceeds. The following are examples of common types of personal property that may be attached.

1. Money on deposit in the defendant's bank account. To attach a bank account, you must tell the sheriff's office the name and address of the bank where the defendant has an account. The bank will turn the money in the defendant's bank account over to the sheriff.

2. If the defendant is a business that has a cash register, the sheriff can seize the money in the cash register.

3. Other types of personal property, such as vehicles, major household appliances, tools or

equipment, etc. You must tell the sheriff what property you want taken, and where it is located.

If you want to attach the defendant's personal property, you must ask the court clerk (in the county where your case was heard) for a certified copy of the judgment. You must also prepare an "Affidavit and Application for Writ of Execution." You can get a form from the court clerk for the application. The application must be typewritten or printed in black ink. It must include the same caption as your judgment (the names of the plaintiffs and defendants and the case number.)

You must file the completed application with the court clerk, along with the certified copy of the judgment. You must then ask the court clerk for a "Writ of Execution." You will be required to pay the court clerk a \$2 fee. The clerk's fee will be added to the amount the sheriff is to collect. The court clerk will give you the papers to take to the sheriff's office.

You must take the papers to the sheriff's office *in the county where the property to be attached is located*. When you file the papers at the sheriff's office, you will be required to pay a fee. The sheriff's fee will be added to the amount the sheriff is to collect. You will need to provide the sheriff with written instructions. In most counties you can get a form from the sheriff's office. The instructions must be typewritten or printed in black ink. In the instructions, you must tell the sheriff's office what property you want seized, and where the property is located. If the property is in the possession of someone other than the defendant, you must tell the sheriff's office the name and address of the person who has possession of the property.

You can execute on any personal property in which the defendant has an interest, but it is much easier if the defendant is the only owner of the property, and the property is not subject to any debts or liens. If there is anyone else who has an interest in the property, you must include the name and address of the person who has an interest in the property in the sheriff's instructions. Someone with an interest in the property can include a co-owner of the property, someone who has filed a lien on the property, or someone who loaned money to the defendant for the property (who has a *security interest* in the property).

You must make reasonable efforts to find out if anyone else has an interest in the property. This includes calling the Idaho Secretary of State's Office to find out if anyone has filed a lien or security

interest in the property. If the type of property is one for which title must be or can be registered, you must check with the agency who maintains the register to find out if there are other registered owners or lienholders. For example, for vehicles, you should check with the county motor vehicles department.

The sheriff will serve the papers on the defendant. If the property is in someone else's possession, the sheriff will serve copies of the papers on the person who has possession of the property. If someone else has an interest in the property, the sheriff will serve copies of the papers on the other person who has an interest in the property. If the property is in the defendant's possession, the sheriff will seize the property. If the property is in someone else's possession, the person who has possession is required to turn the property over to the sheriff. If the property is something other than money, the defendant can get the property back by paying the sheriff the amount the defendant owes you.

If the property is money, the sheriff will turn the money over to you unless a *claim of exemption* is filed with the sheriff. If the property is something other than money, the sheriff will sell the property at auction and pay you the proceeds, unless a *claim of exemption* is filed with the sheriff. A claim of exemption can be filed by the defendant or anyone else with an interest in the property. There is more information about exemptions later in this pamphlet.

Claims of Exemption

There are some types of money and property that cannot be taken to pay a judgment, which are called *exempt from execution*. When the sheriff serves the papers on the defendant, the sheriff will also give the defendant a legal notice. The legal notice has information about the types of money or property that are exempt, and how the defendant can claim an exemption for the property that has been seized. You can get a copy of the legal notice from the sheriff's office.

If the defendant believes that the property that has been seized is exempt, the defendant must file a *claim of exemption* with the sheriff within 14 days after the papers are served on the defendant. If the defendant files a claim of exemption, the sheriff must notify you within one business day after the claim of exemption is filed.

If you want to contest the claim of exemption, you must file a "Motion to Contest the Claim of Exemption" with the court clerk. You can get a form

from the court clerk. Your motion must be typewritten or printed in black ink. Your motion must include the same *caption* as your judgment (the name of the plaintiffs and defendants, and the case number). The motion must include a notice of hearing at the bottom of the motion, with spaces for the court clerk to fill in the date, time and place of the hearing. The motion must be filed within five business days after you are notified of the claim of exemption.

The court clerk will fill in a date and time for the hearing on the motion at the bottom of the form, and will mail a copy of your motion to the defendant. The hearing will be scheduled no less than 5 days and no more than 12 days from the date you file the motion. At the hearing, you should bring any documents or other evidence you have that shows that the property is not exempt. At the hearing, the judge will decide if the property is exempt, and enter an order granting or denying the claim of exemption.

If you do not file a motion to contest the claim of exemption, or if the judge grants the claim of exemption, the sheriff will return the property to the defendant. If the defendant does not file a claim of exemption, or if the judge denies the claim of exemption at the hearing on your motion, the sheriff will turn the money over to you (or if the sheriff seized property other than money, the sheriff will sell the property at auction and pay you the proceeds). The sheriff will also collect from the defendant for any fees you paid to the court clerk or the sheriff to execute on the judgment.

If there is someone else who has an interest in the property that the sheriff seized, the other person who has an interest in the property can also file a claim of exemption, called a *third party claim*. The procedure for a third party claim is the same as the procedure for a claim of exemption by the defendant. But because there are third party rights involved, some special issues can arise, and the following are two common examples.

1. If someone else has an interest in the property that was seized, you may be required to pay the other person for their interest in the property before the sheriff can sell the property, and you would receive their interest in the property. For example, if you have the sheriff seize the defendant's car, and the car is subject to a loan that the defendant took out to buy the car, then the loan company has an interest in the car. You may be required to pay off the remaining debt on the car to the loan company before the sheriff can sell the car,

and you would have the same rights to collect on the debt that the loan company had.

2. There may be an issue as to whether the third party actually has an interest in the property. If a third party files a claim, and you do not believe that the third party actually has an interest in the property that was seized, you can file a motion to contest the claim of exemption, the same as for a claim of exemption by the defendant. The judge will decide whether or not the third party has an interest in the property at the hearing on your motion to contest the claim of exemption.

Locating the Defendant's Property

If you want to garnish the defendant's wages or attach the defendant's property, you must provide the sheriff with written instructions, telling the sheriff the name and address of the defendant's employer, and telling the sheriff what property you want seized and where it was located. *The sheriff's office will not investigate to find out where the defendant is located, whether the defendant is employed or who the defendant's employer is, or what assets the defendant has and where they are located.* If you do not know what assets the defendant has or where they are located, there are some procedures available to assist you.

1. In some counties, when you take your papers to the sheriff's office for executing on the judgment, and give the sheriff's office your written instructions, you can ask the sheriff's office to do a *notice of inquiry*. When the sheriff's deputy serves the papers on the defendant, the deputy will ask the defendant questions about where the defendant works, what bank accounts the defendant has, what other property the defendant has, and where the property is located. The deputy will write the information down on the notice of inquiry, and you will be provided with a copy.

2. You can ask the court for an order requiring the defendant to appear in court for a *debtor's examination*. At the examination, the defendant must swear or affirm to tell the truth, and you or the judge can ask the defendant questions about the defendant's assets. If the defendant does not appear for the hearing, or refuses to answer questions, the judge can hold the defendant in contempt, and can order the defendant to pay fines and/or go to jail. If you want the defendant ordered to appear in court, there are procedures you must follow that are established by law. Because contempt is punishable by fines and/or jail, those

procedures must be strictly complied with. If you want the defendant ordered to appear in court for a debtor's exam, you should talk to a lawyer.

Recovery of Personal Property

If your judgment provides for the defendant to return items of your personal property, and the defendant has not returned the property to you, there is a way to execute on the judgment. To execute on a judgment for the recovery of personal property, you must ask the court clerk (in the county where your case was heard) for a certified copy of the judgment. You must also prepare an "Affidavit and Application for Writ of Possession." You can get a form from the court clerk for the application. The application must be typewritten or printed in black ink. It must include the same *caption* as your judgment (the names of the plaintiffs and defendants and the case number).

The application must include a description of the location where you believe the property is located. If you believe that the property is located inside a building or enclosure at that location, you must state describe the building or enclosure. You must state why you believe the property is at that location. You must sign the application in front of a notary or court clerk. If you sign it in front of a notary, the notary must sign and seal the application.

You must file the completed application with the court clerk, along with the certified copy of the judgment. You will be required to pay the clerk a \$2.00 fee. The court clerk will give the papers to the judge. If the judge decides that there is reasonable cause to believe that the property is to be found at that location, and that the description of the location is sufficiently specific, the judge will issue a "Writ of Possession." If the judge issues the writ, the court clerk will give you the papers you need to take to the sheriff's office.

You must take the papers to the sheriff's office in the county where the property is located. When you file the papers at the sheriff's office, you will be required to pay a fee. The sheriff will serve the writ of possession at the location described in the writ, to obtain the property described in the writ. If the sheriff is able to recover the property, the sheriff will tell you where you can go to pick it up.