

DEBT RECOVERY & ENFORCEMENT FAQs

How can I recover money owed to me?

Letter of Demand

We recommend that the first step is to issue a formal letter of demand to the debtor requesting the full payment of the debt, or that a satisfactory payment arrangement is made within twenty-one (21) days, failing which legal action will be taken.

Summons

If after 21 days, the debtor has not made payment in full or appropriate arrangements for payment, we recommend the preparation and filing of a Summons with the Court. The debtor then has twenty-one (21) days in which to dispute the amount claimed from the date of service, by the filing of a Defence.

If the debtor files a Defence

Then the matter will be listed for a Directions Hearing before the Court. If a resolution is not able to be negotiated, then the matter may proceed towards a Trial.

If no Defence is filed – Enter Judgment

If a debtor has not filed a Defence within 21 days of service of the Summons, we recommend that we apply for default judgment over the amount claimed.

Obtaining judgment over a debt is the key factor in recovering that debt. Once judgment is obtained we can then move towards enforcing the judgment and recovering the debt.

What methods are available to recover the debt?

Debt Enforcement Procedure - Judgment obtained

Once judgment has been obtained as detailed above, the next step is to try to recover the debt in one of the following ways;

File an Investigation Summons

An Investigation Summons is a process whereby the Court requires the judgment debtor to appear before Court to disclose their assets.

During the Hearing, the Court assesses the judgment debtor's ability to meet repayment of the debt and usually makes an order for a periodic payment.

If the judgment debtor defaults on their obligation to make the set periodic payment by at least two payments, we are then at liberty to issue an Examination Summons.

File an Examination Summons

An Examination Summons requires the judgment debtor to appear before the Court for an Examination Hearing. This is very similar to an Investigation Hearing whereby the judgment debtor is examined as to their means and ability to pay the judgment debt. They are also required to explain their default in the previous instalment order.

Warrant of Arrest and Commitment

If a judgment debtor fails to attend an Investigation Hearing, an Examination Hearing or fails to comply with a Court ordered payment, we recommend that we seek a Warrant of Arrest.

By filing an application with the Court, the judgment debtor is arrested, brought before the Court and then examined regarding their ability to repay the judgment debt.

If the judgment debtor's explanation for non-compliance with previous Court orders is unsatisfactory, the Court may make an order for his imprisonment.

Warrant of Sale (personal property)

Once a Warrant of Sale is issued, a Court Sheriff Officer attends the judgment debtor's address to seize and sell personal property of sufficient value to recoup the debt and claimable costs.

Please note that clothing, household goods, tools of trade to a certain value and motor vehicles to a certain value cannot be seized.

Warrant of Sale (real estate)

The Court Sheriff Officer also has the power to seize and sell the judgment debtor's real property or land.

Charging Order

Is an order allowing the registration of the judgment debt on any real property owned by the judgment debtor.

This means that the judgment debtor will be prohibited or restricted from any dealings with the property subject to the charge.

Should the property be sold at any stage, the presence of a charge (in practice) will require the judgment debtor to address the judgment debt (usually by making payment) to enable the charge to be removed so that clear title can be passed to the purchaser.

What other options are available to me?

Bankruptcy

A Bankruptcy Notice is a beneficial option if the debt is substantial, or the judgment debtor does not wish to become Bankrupt because he has substantial assets, has a business or has a profession which he may lose if Bankrupt, as the threat of becoming Bankrupt motivates the judgment debtor to negotiate a settlement.

In order to issue bankruptcy proceedings, the debt must be a minimum of \$5,000.00.

Winding Up (Companies only)

Usually the most efficient way to pursue a debt owed by a Company is by serving on it a Creditor's Statutory Demand for Payment.

Even though a Court judgment is not required to issue a Creditor's Statutory Demand, if it is not supported by a judgment, then it is open for the Company to try to have it set aside by satisfying the Court that there is a genuine dispute in relation to the Debt.

Serving a Creditor's Statutory Demand will require action by the Company within twenty one (21) days, failing which the Company at law will be deemed to be insolvent. This will enable us to make an application to the Court to wind up the Company.

Once a Company has been deemed insolvent, an application to wind up the Company must be made within three months of the non-compliance with the Creditor's Statutory Demand.

If you are owed a debt, or owe a debt, please call Georgiadis Lawyers for assistance and speak with a helpful member of our team.

Disclaimer

The information in this article is not to be relied upon for the purposes of legal advice. It is general information only. If you require specific legal advice in relation to your matter, please call Georgiadis Lawyers on 8231 5255 to make an appointment.