

Enforcing A Debt - Your Options

After obtaining judgment against your debtor, you might expect that the debt will be repaid in full. However this is often not the case, despite there being a considerable incentive to pay in full within 28 days of the judgment (in which case the entry on the Register of County Court Judgments can be removed.) Failure to do this can make it extremely difficult to get credit.

There are numerous methods by which you can enforce a judgment, and it is possible to use more than one method either consecutively or at the same time. However enforcing debts incurs costs, so it is important to determine which methods of enforcement are likely to be successful before pursuing them.

Find Out More About Your Debtor

If you are running a business your credit policy may mean that you already know a considerable amount of information about your judgment debtor's financial circumstances. If you need more information before you are able to make this decision, you can apply to the court for an Order to Obtain Information.

This is a process by which a judgment debtor comes to court to answer questions about their financial circumstances and can be used for individuals and businesses. Aside from the documents specified on the form, you can specify that the court officer asks the debtor questions or produces particular documents. You can obtain this type of order to find out more information about individuals or companies.

Warrant of Execution

This method of enforcement involves a County Court Bailiff or High Court Enforcement Officer writing a letter to the judgment debtor and giving them seven days to pay the debt in full. Failing this, they will attend the judgment debtor's home or place of business and either collect money or seize goods in order to sell them at auction.

A warrant of execution only works if the judgment debtor has property worth seizing as essential household items, and items they need for work (e.g. tools) are exempt. Before embarking on this method of enforcement, it is worth investigating what the judgment debtor owns in terms of property that is capable of being seized and sold.

Attachment of Earnings

If your judgment debtor is an employed individual (except for the Armed Forces, which are subject to different rules) it is possible to take payments directly from their wages or salary. The court will make an assessment as to how much the judgment debtor can afford and payments will be made to CAPS (the national collections centre for attachments of earnings orders), which is responsible for ensuring that the employer makes the payments required under the order. If payments stop, CAPS will contact the employer to find out why.

Often a judgment debtor does not want their employer to find out about judgments against them, and will try to negotiate a payment plan directly with the judgment creditor to avoid this embarrassment. However, it is worth noting that an attachment of earnings order will stop in the event that the defendant leaves the job or becomes self-employed or unemployed, but the order may be reissued if they find new work.

Third Party Debt Orders

When a judgment debtor is owed money by a third party, it is possible to obtain an order that freezes the money in an account so as to prevent it from being paid to the judgment debtor. This may be, for example, the debtor's bank account or a customer or business that owes the debtor's business money.

Timing is very important in relation to this type of order, as money is frozen on the day the order is received. The judgment debtor may try to dispute the order, and there are obvious problems if the third party does not owe the debtor any money. If the debtor is an individual, they may contest the order on the basis of hardship.

Charging Orders

A charging order can be placed on your judgment debtor's property: residential home, other real estate, money paid into court or on stocks and shares. Rather like a charge that a mortgage company or bank places on a house, a charging order means that when the property is sold you will receive your money back (unless there is insufficient equity to pay you the value of the order.)

It is important to consider whether or not your judgment debtor has sufficient equity in the property after any mortgage or other charges in priority are taken into consideration. It should also be noted that obtaining a charging order does not compel the judgment debtor to sell the property, but this may be possible in certain circumstances.

Enforcement action can be complex. If you have questions about how to enforce a debt against an individual or business contact us today.

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