

**MAGISTRATES COURT OF WESTERN AUSTRALIA
CIVIL JURISDICTION
FACT SHEET 30**

DEBT APPROPRIATION ORDER

This fact sheet provides information for a judgment creditor, judgment debtor and third person. During the proceedings, the third person may be indebted to a judgment debtor.

What is a debt appropriation order?

A debt appropriation order is a Court order requiring a third person to pay all, or part of, the judgment debt (the appropriated debt) to the judgment creditor instead of the judgment debtor.

For example:

- 1) The judgment creditor successfully sues the judgment debtor.
- 2) The Court awards a judgment of \$5,000.
- 3) Judgment debtor is required to pay the judgment debt to judgment creditor.
- 4) Judgment creditor discovers that a third person owes \$5,000 to judgment debtor.
- 5) Judgment creditor is granted a debt appropriation order by the Court.
- 6) The debt appropriation order requires the third person to pay \$5,000 (appropriated debt) to judgment creditor instead of the judgment debtor.

What is the judgment debt?

The unpaid amount of any of the following:

- judgment sum;
- interest on the judgment sum; or
- enforcement costs of the judgment.

How does the judgment creditor apply for a debt appropriation order?

Complete and lodge a **Form 6 – Application or Request to a Court**, and supporting **Form 2 – General Form of Affidavit**. A prescribed fee must also be paid (if not previously paid).

These forms and the fee schedule are available from the Magistrates Court website: www.magistratescourt.wa.gov.au.

The Court will consider the application without a hearing and will issue an order to the judgment creditor.

How does the judgment creditor serve the order on the third party?

You need to serve the debt appropriation order, on the third person by **ordinary service**.

See Fact Sheet:
No. 8 - Serving a Court Document

When does the order take effect?

As soon as it is served on the third person.

How does the third person make their payment?

If the debt is due in full, it must be paid to the judgment creditor *within seven days* of the debt appropriation order being served.

In any other case, the debt must be paid *within seven days* of the appropriated debt becoming due to the judgment debtor.

How can instalments be made?

Payments must be paid to the judgment creditor.

If any instalment is due, it must be paid *within seven days* from the debt appropriation order being served.

In any other case, the payment must be made *within seven days* from the instalment being due.

Third person expenses

Reasonable expenses can be retained by the third person:

- for the first payment – an amount up to but not exceeding \$10; and
- for the second and subsequent payments – an amount up to, but not exceeding, \$5.

Advising the judgment creditor if debt not due or subject to a condition

If any part of the appropriated debt:

- a) is not payable until more than seven days after the order being served; or
- b) is not due and payable until a condition is fulfilled.

the third person must, *within seven days* of the order being served, give the judgment creditor a written notice.

This notice must state:

- the date that the appropriated debt, or any part of it, is or will be or may be due and payable; and
- the amount of the appropriated debt, if that amount is less than the judgment debt.

Third person's obligation to advise judgment debtor of financial matters

The judgment debtor must be given written notice of details of the amounts paid to the judgment creditor or retained for reasonable expenses.

Is there anyway to object to the order?

The third person can object to the order when:

- A person other than the judgment debtor and the judgment creditor owns or has a claim on or interest in the appropriated debt;
- The appropriated debt does not and will not exist; or
- You have an unsatisfied monetary judgment against the judgment creditor or the judgment debtor.

How do I object?

Complete and lodge **Form 20 – Notice of Objection by Third Person to Debt Appropriation Order**.

This form is available from the Magistrates Court website: www.magistratescourt.wa.gov.au.

The Court will serve a copy of the objection on all interested parties.

What happens after an objection is lodged?

Objection allowed by the judgment creditor

A judgment creditor may allow the objection by completing and lodging a **Form 21 – Notice by Judgement Creditor to Third Person Allowing Objection to Earnings/Debt Appropriation**.

This form is available from the Magistrates Court website: www.magistratescourt.wa.gov.au.

Objection not allowed by the judgment creditor

If the judgment creditor does not allow the objection, the third person, judgment debtor or any other person whom the third person claims owns or has a claim or interest in the appropriated debt, can apply to the Court for an order that the objection be allowed.

This must be done *within seven days* by lodging a **Form 22 – Application for Order than an Objection to Earnings/Debt Appropriation be Allowed**.

This form is available from the Magistrates Court website: www.magistratescourt.wa.gov.au.

When does an order finish?

A debt appropriation order ceases to have effect when:

- the third person is notified as such by the Court or the judgment creditor;
- The third person is notified that an objection has been allowed;
- The judgment debt is paid in full; or
- An order cancelling the debt appropriation order has effect.

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.