



Magistrates Court of Western Australia

Civil Jurisdiction

Fact Sheet 28 – Property (seizure and sale) Order

Information for the Judgment Debtor

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.

Power of entry of bailiff

The bailiff may use any force and assistance that is reasonably necessary to:

- a) Enter any place where they believe, on reasonable grounds, there is or may be personal property which can be seized under a property (seizure & sale) order;
- b) Re-enter any place where any property or record is that may be seized under a property (seizure & sale) order;
- c) Seize and remove any such property or record;
- d) Take measures to secure or protect property, records, computers or other things against damage or unauthorised removal or interference;
- e) Make or print out, and keep, a copy of any such record.

What property cannot be seized by the bailiff?

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.

Custody of seized property

A bailiff may do the following with your seized personal property until it is sold:

- Leave the property with you for safekeeping. This allows you to continue to use the property.
 - i. You must not move or allow the property to be moved without the consent of the bailiff.
 - ii. You must not give custody or possession of the property to another person without the consent of the bailiff; or
- Remove the property and arrange storage at another location

Unless the debt is paid, including all enforcement costs, the bailiff will sell your 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.

Your options as a judgment debtor

If you do not want your property seized and sold by the bailiff you can:

Pay the debt

The fastest, cheapest and simplest way for you to stop the bailiff selling your property is to pay the debt and costs in full.

Talk to the judgment creditor

If you and the judgment creditor arrange payment, the judgment creditor may agree to instruct the bailiff to return the property (seizure & sale) order to the Court.

How do I apply to suspend enforcement?

An application to suspend enforcement of judgment must be made to the Court registry where the judgment was given.

The Court can only make a suspension order if it is satisfied that you are unable to pay the judgment debt or there are special circumstances that justify doing so.

What is an interpleader application?

Where a bailiff has seized property that does not belong to you but to another party and the Court determines ownership of the property.

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.