

COLLECTING A JUDGMENT

You won in court, now what?

Once the judgment has been awarded, the winning party becomes a judgment creditor, and the losing party becomes judgment debtor. No court, not just Small Claims, automatically forces a judgment debtor to pay. The court has confirmed that the debtor has a legal, enforceable obligation to pay, but it is the creditor's job to collect that debt.

The kinds of court actions you can take to collect are wage and non-wage garnishments, attaching property (live executions), and liens. Each collection step will require you to return to the clerk, fill out more forms, and pay more fees (they are added on to the judgment amount). It can be a lengthy and increasingly costly process, but it can work.

Communicate with the Debtor

After a judgment has been entered, the debtor has 15 days to voluntarily pay the debt before the creditor can take legal action to collect. (19 days is recommended to allow for delays in signing, weekends and holidays). If you won a judgment because the other party did not appear in court (a default judgment), do not assume that the losing party even knows that they owe a debt. You may want to notify the defendant as to what happened and request payment.

Judgment Debtor Exam

Before you collect from the debtor, you need to know whether they have a job, have bank accounts, own real estate, or own property that is attachable. If you do not already have this information, requesting a Judgment Debtor Exam may be your first step.

On the scheduled court date, you will have the right to ask any questions needed to determine where you might find enough of the debtor's assets to pay your judgment. The debtor will be under oath, and you will simply ask your questions and write down the answers.

Some possible questions are:

- Place of employment and identity of employer
- Amount of take-home pay
- Bank accounts and amounts in them
- Location of any land or houses owned
- Make, model, year, license plate & VIN number, title, number of vehicles owned, and any amount owed on them
- Address of any rental property owned, and identity of the tenants

Garnishments

Wage garnishment will require the debtor’s employer to withhold a portion of each paycheck to pay a debt. A notice must be mailed to the debtor—along with a certificate of mailing receipt from the post office—15 days before filing for the garnishment.

Non-wage garnishment will require a debtor’s bank to release funds to pay a judgement. There is no notice requirement before filing a non-wage garnishment.

Live Execution

If the judgment debtor fails to pay, the judgment creditor may request that the court seize the debtor’s property, sell it, and collect the judgment from the proceeds. Although the concept is rather simple, the laws on execution have made it more complicated. The debtor can request a hearing to claim “exemptions” that are paid to the debtor before paying the judgement. As a result, live execution will usually make sense only when the property involved is worth considerably more than the amount of the judgment.

Liens

A lien (sounds like “lean”) can be placed on any real estate owned by the judgment debtor and must be renewed every five years. When the property is sold, the creditor will recover the judgment from the proceeds.