

Small Claims Court Guide: Seizure and Sale of Personal Property

Getting Results: Collecting Money Owed

Some people think that when a trial is over, the winner will automatically be paid and that's the end of the case. Unfortunately, for some it's just the beginning. Getting a court order or a settlement agreement is one thing, but getting the money that's owed is another matter.

The Court will not collect money – that's the job of the person to whom the money is owed.

If the person who owes money does not pay, there are a number of tools to use to collect the money. This booklet describes one of these options: seizure and sale of goods by the court Sheriff.

Who are Creditors, Debtors and Garnishees?

- **Creditor:** A creditor is a person who is entitled to payment under a judgement or court order.
- **Debtor:** A debtor is a person who is required to make payment under a judgement or court order.
- **Garnishee:** A garnishee is a third party, often a bank or an employer, who owes money (often in the form of wages) to the debtor.

Seizure and sale of the debtor's goods

If someone has been ordered by the court to pay a creditor money and hasn't paid, the creditor can ask the Sheriff to take personal possessions belonging to the debtor and sell them in order to retrieve the money owed.

Because the costs of the procedure can be high and there are numerous exemptions regarding what can be seized, it is best to find out before hand if the debtor has any goods worth taking.

What may be seized?

Generally, creditors try to seize the debtor's significant possessions such as vehicles or shares in a company, but any goods that are worth taking and are not part of the exemptions can be seized.

Under the *Exemptions Act*, the debtor's following possessions are exempt from seizure by a creditor:

- a) Household furniture, utensils and equipment that form part of the permanent home of a debtor (unless this is the specific content of the claim as outlined in the Writ of Execution);
- b) Necessary and ordinary clothing of the debtor and that of his or her family;
- c) Food, fuel and other necessities of life required by the debtor and his or her family for the next 12 months;
- d) \$600 worth of livestock, fowl, books, tools and implements necessary to and actually used by the debtor in his or her business or profession; and,
- e) The house and buildings occupied by the debtor and the lot on which they are situated, not exceeding \$3,000.

In addition, a creditor may not seize anything that the debtor owns jointly with someone else. This often means that household goods, for example, cannot be taken.

What is the procedure for requesting seizure and sale of a debtor's goods?

1. Prepare a Writ of Execution (Form 42). The Writ of Execution is the direction to the Sheriff to seize the goods and lands of the person who owes you money in accordance with the court order. The Writ of Execution must include a direction to the Sheriff to recover:
 - a) the amount owing under the court order that is being enforced;
 - b) the amount of costs the creditor has incurred in carrying out this process; and,
 - c) the interest that has accumulated since the court order was made.
2. File the Writ of Execution in the court registry. There is a \$35 fee to the Sheriff and a \$15 filing fee to the court registry.
3. Pay a deposit to the Sheriff to cover the estimated time it will take the Sheriff to seize the goods. The amount of this deposit will vary based on a number of factors including if travel is required, and the nature and number of goods to be seized.

What does the Sheriff do?

The Sheriff informs the debtor of his or her exemption rights under the *Exemption Act* when he or she first visits the debtor's home. The Sheriff will look into what goods might be seized. The debtor will be given the chance to pay the amount due at the time of seizure. If the debtor has an ability to pay, the presence of the Sheriff is sometimes an effective measure to make the debtor pay. If not, any goods worth seizing that are not part of the exemptions may be taken away and sold in order to recover the money owed to the creditor.

Since the proceeds from the goods that are seized are used to pay the Sheriff's costs first, the goods must have sufficient value to pay the Sheriff's final fee, and the associated costs of towing, carting, and storage in order to be worth seizing. If the goods do not have enough value to pay these costs with at least some amount left over for the creditor, they are not worth seizing.

The Sheriff will return the original Writ of Execution, with a notation explaining the outcome. If the procedure is not successful, the creditor may not be able to recover the costs already paid to the Sheriff.

If goods have been seized and sold, how does a creditor collect his or her money?

1. If goods have been seized and sold, the Sheriff's costs have been paid, and the remaining money is now with the court, the creditor may receive the money owed, provided there are not other creditors waiting for this money too.
2. Where the debtor owes money to a number of creditors, and these other creditors have filed Writs of Execution with the court, the money received through the seizure and sale process will be distributed among all the creditors.
3. If the proceeds from the seizure and sale are the full amount owed to all of the debtor's creditors, the Sheriff will immediately pay this money to the creditors.
4. If the proceeds from the seizure and sale are not the full amount owed to all of the debtor's creditors, the Sheriff will determine how the money will be distributed and will send a distribution statement to all creditors. The money will generally be distributed on a *pro-rata* basis and according to the priority of payments outlined in the *Consolidation of Creditors Relief Act (Nunavut)*.
5. If no objection is made to the way the Sheriff proposes to distribute the money, the Sheriff will pay out the money to the creditors. If an objection is made to the way the Sheriff will distribute the money, the creditor(s) can apply to a judge to settle the dispute.

This is one in a series of booklets available online or from the Small Claims Court Registry. The titles in the series are:

A (pages 1 - 4) WHAT IS SMALL CLAIMS COURT?

B (pages 1 - 7) MAKING A CLAIM

C (pages 1 - 4) SERVING DOCUMENTS

D (pages 1 - 5) REPLYING TO A CLAIM

E (pages 1 - 4) GETTING READY FOR COURT - PART 1 - MEDIATION

F (pages 1 - 3) GETTING READY FOR COURT – PART 2 - THE TRIAL

G (pages 1 - 3) DEFAULT

H (pages 1 - 3) WITNESSES

I (pages 1 - 4) GETTING RESULTS: GARNISHMENT

J (pages 1 - 3) GETTING RESULTS: SEIZURE

CIVIL RULES - For more detailed information you may want to look at the small claims court rules themselves. The rules have been written for non-lawyers. (Insert Link at beginning of paragraph)

The people behind the counter at the Small Claims Registry are helpful. They cannot give legal advice and they cannot fill out your forms for you, but they will gladly answer your questions about Small Claims Court procedures.

The information contained in this booklet is simply an overview of the significant provisions of the Small Claims Rules. The information is not intended to be legal advice. If you have any legal questions, you should see a lawyer.

Nunavut Legal Aid Offices:

Maliiganik Tukisiinaikvik (Iqaluit) – (867) 979-5377

Keewatin Legal Services (Rankin Inlet) – (867) 645-2536

Kitikmeot Law Centre (Cambridge Bay) – (867) 983-2906

High Arctic Law Office (Pond Inlet) – (867) 899-8707

Civil Registry of the Nunavut Court of Justice:

Main line – (867) 975-6102

Toll free – 1-866-286-0546 (select “2” for the Civil Registry)