

SMALL CLAIMS

HOW TO COLLECT A JUDGMENT

I. INTRODUCTION: JUDGMENT CREDITOR AND JUDGMENT DEBTOR

A. THE JUDGMENT CREDITOR MUST COLLECT THE JUDGMENT

The judgment creditor (the party who has won judgment) must take steps to collect the judgment. The Court will not collect the judgment for the creditor. The Small Claims Court judgment becomes final and enforceable 30 days after the clerk has delivered or mailed the "Notice of Entry of Judgment" (SC-130). The "Notice of Entry of Judgment" date of mailing will be stamped on the form itself. If the defendant files an appeal and loses, the judgment becomes enforceable immediately.

B. A NOTE ABOUT THE JUDGMENT DEBTOR

The judgment debtor (the party who has lost judgment) should pay the judgment amount immediately. If the judgment debtor fails to pay the judgment amount within 30 days of the "Notice of Entry of Judgment" date, the debtor must complete and return a "Judgment Debtor's Statement of Assets" (SC-133) form to the judgment creditor. This form provides the judgment creditor with information concerning the debtor's property and sources of income. The judgment creditor can use this information to collect the judgment. If the judgment debtor does not complete the "Judgment Debtor's Statement of Assets," the judgment creditor may bring the debtor into court to complete this form by filing an "Application and Order to Produce Statement of Assets and to Appear for Examination" (SC-134).

II. OPTIONS FOR THE JUDGMENT DEBTOR

This section highlights ways for the debtor to satisfy a judgment. Several books give a more thorough treatment of this topic. A good legal text on judgment enforcement procedures should be consulted prior to using any of the steps set forth below.

1. PAY THE ENTIRE JUDGMENT TO THE COURT

The judgment debtor may pay the judgment directly to the court for a fee of \$20. The judgment debtor pays the judgment by completing the form "Request to Pay Judgment to the Court" (SC-145) and submitting the amount of the total judgment, including costs and interest. There are several reasons why you might make payment directly to the Court: (1) You may wish to avoid contact with the plaintiff, (2) You cannot find the plaintiff, or (3) You may wish to resolve this immediately. The Court (and not the judgment creditor) is then responsible for completing the "Acknowledgment of Satisfaction of Judgment" (EJ-100) and entering satisfaction. If you pay by cash or cashier's check, then the satisfaction of judgment is entered immediately. Otherwise, there is a 30 day stay pending full reimbursement from a bank for a personal check (CCP Sections 116.840 & 116.860).

2. INSTALLMENT PAYMENTS

If the judgment debtor is unable to pay the entire judgment at one time, they may pay the amount of the judgment in installments. The judgment debtor should first ask the judgment creditor if they are willing to accept installment payments. If the judgment creditor insists on receiving the full amount, or if both parties cannot agree on an installment payment plan, the judgment debtor can file a "Request to Pay Judgment in Installments" (SC-106) form. This form must be filed with a "Financial Statement" (EJ-165), which is a financial declaration form. Both the "Request to Pay Judgment in Installments" and the "Financial

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Statement” will be mailed to the judgment creditor by the Court. The judgment creditor can either oppose the debtor’s request or agree to it. A hearing may or may not be held.

III. HOW A JUDGMENT DEBTOR CAN PROTECT CERTAIN ASSETS

This section highlights certain ways that a judgment debtor can protect certain assets from collection. A good legal text on judgment enforcement procedures should be consulted prior to using any of the steps set forth below.

1. PROTECTING PROPERTY OR INCOME FROM COLLECTION

A judgment debtor may be able to protect some or all of their assets including property and income from being taken to pay the judgment. It may be possible to protect necessities of life such as one's house, furniture, clothes, car (within certain price limitations), certain other personal property, and all or a portion of one's earnings. In addition, workers' compensation, unemployment, pension, social security, welfare, or insurance payments are protected and cannot be taken to satisfy a judgment (CCP Sections 703 & 704).

Caution: While some assets of a judgment debtor are automatically protected, the debtor must ask the Court to determine if other assets are exempt from enforcement action. To protect these assets, the debtor must file a “Claim of Exemption” (EJ-160) form within 10 days after they receive the notice that the judgment creditor is taking enforcement action. Obtain the form from the clerk or the internet www.ocsmallclaims.com/. List the property believed to be exempt. If enforcement action is taken against earnings, list all income and expenses. The Court will decide which assets and earnings are protected from collection.

IV. OPTIONS FOR THE JUDGMENT CREDITOR

This section highlights ways for the judgment creditor to collect his/her judgment. A good legal text on judgment enforcement procedures should be consulted prior to using any of the steps set forth below.

1. LEVY EXECUTION ON THE DEBTOR’S WAGES

A wage garnishment orders the debtor's employer to give the sheriff part of the debtor's wages until the debt is paid. To garnish wages, complete a “Memorandum of Costs” (MC-012) form, which states the interest and costs incurred post judgment and a “Writ of Execution” (EJ-130) form, which directs the sheriff to enforce the judgment. The “Writ of Execution” costs 15 dollars to file with the Court Clerk. Once stamped and issued by the Court Clerk, take the “Writ of Execution” form along with a completed “Application for Earnings Withholding Order” (WG-001) to the Sheriff. There is a fee of \$25 for the Sheriff to serve the “Application for Earnings and Withholding Order.”

2. LEVY EXECUTION ON THE DEBTOR’S CHECKING OR OTHER BANK ACCOUNT (BANK LEVY)

A bank levy means that money will be taken from the judgment debtor's bank account to pay the judgment. Only the name and branch address of the bank is needed, the account number is not necessary. You will need to get a “Memorandum of Costs” (MC-012) for interest and a “Writ of Execution” (EJ-130) which directs the sheriff to perform a levy. Both forms must be filed with the court clerk. There is a \$15 fee to issue a “Writ of Execution.”

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3. RECORD AN ABSTRACT OF JUDGMENT

An "Abstract of Judgment" (EJ-001) puts a lien on any land, house, or other building the judgment debtor owns in the county where the "Abstract of Judgment" is recorded. Record the abstract in all counties where the debtor may own property. If the property is sold with title insurance, the debt will be paid out of the proceeds of the sale. Typically, you do not receive interest on the judgment, but only the principal stated in the "Abstract of Judgment." To have an "Abstract of Judgment" issued, you will need to pay a \$15 fee with the court clerk. After it is issued take it to the County Recorder's Office to record.

4. HAVE THE SHERIFF DO A "TILL TAP"

If the judgment debtor is a business with a cash register, the sheriff can go to the business and take enough money out of the register to satisfy the judgment and the Sheriff's fee. You will need to get a "Memorandum of Costs" (MC-012) for interest and a "Writ of Execution" (EJ-130) which directs the sheriff to perform a "till tap". Both forms must be filed with the court clerk. There is a \$15 fee to issue a "Writ of Execution." Take the "Writ of Execution" with the Sheriff and Instruct the Sheriff to do a till tap. You must know the name and address of the business. If there is not enough money in the register to pay the judgment, you will have to pay another fee each time the Sheriff goes back. There is a \$85 fee for the Sheriff to perform a "till tap."

5. PLACE A "KEEPER" IN THE DEBTOR'S BUSINESS

If the debtor is a business, the Sheriff will, for an 8hr/\$205 fee, remain in the debtor's business establishment and take all the funds that come in until the judgment is paid. The keeper can collect cash, checks, and bank credit card drafts. Make sure you have the name and address of the business. You will need to get a "Memorandum of Costs" (MC-012) for interest and a "Writ of Execution" (EJ-130) which directs the sheriff to be hired as a "keeper." Tell the Sheriff you want to put a keeper in the business. If the debtor closes the business while the Sheriff is there, you'll have to pay another fee each time the Sheriff goes back.

6. CONDUCT A "JUDGMENT DEBTOR'S EXAMINATION"

In a judgment debtor's examination, the debtor is ordered to appear in Court to answer the judgment creditor's questions about the existence and location of his or her salary, bank accounts, property, and anything else that could be used to pay the judgment. If you wish, you can subpoena the debtor's bank books, property deeds, paycheck stubs, and similar documents and require the debtor to bring them to the hearing. To accomplish this you must fill out a "Small Claims Subpoena and Declaration" (SC-107) form and file it with the Court Clerk. At the judgment debtor's examination, you may have the judge order the defendant to turn over any assets in his or her possession. To set a hearing for an examination, you must complete an "Application for Order to Produce Statement of Assets and to Appear for Examination" (SC-134) form and present it to the clerk. There is a \$40 fee for the clerk to issue out a hearing date for a debtor's examination. You must have a copy of this form and a blank copy of the "Judgment Debtor's Statement of Assets (Form SC-133) personally served on the judgment debtor by a Sheriff or licensed process server at least 10 calendar days before the date of the hearing. Then, you must file a "Proof of Service" (Form SC-104) with the court. (See "How to Conduct a Debtor Examination" fact sheet).

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7. SUSPEND DEBTOR'S DRIVER'S LICENSE

If you obtained a judgment for \$750 or less in an auto accident case and the judgment is not paid within 30 days after the judgment becomes final, you may want to consider having the debtor's driver's license suspended for 90 days. You must complete form DL17, available from local offices of the Department of Motor Vehicles. If your judgment is for more than \$750, you may have the license suspended indefinitely until the defendant pays the judgment, for this you must complete form DL30. For further information, call the Department of Motor Vehicles Civil Judgment Unit at (916) 657-7573 or visit their website at www.dmv.ca.gov.

V. PROHIBITED DEBT COLLECTION PRACTICES

Debtors are protected from certain abusive or unfair debt collection tactics. Creditors, including judgment creditors, cannot do or say certain things. For example, commercial debt collection agencies and persons who regularly collect their own debts are generally prohibited from making false or misleading statements to collect a consumer debt. It's also unlawful to harass the debtor, to request more than basic location information about the debtor from another person, to tell the debtor's employer or others that the debtor owes a debt (except in the course of wage garnishment proceedings), or to contact the debtor before 8:00 a.m. or after 9:00 p.m., or at any inconvenient time or place.

If you have any questions or concerns regarding permissible debt collection activities, call your small claims advisor, consult an attorney, or call the Federal Trade Commission's Los Angeles Regional Office at (310) 824-4300. You may file a complaint at the Federal Trade Commission website at www.ftc.gov.

VI. ONCE THE JUDGMENT IS PAID...

After the judgment debtor satisfies the judgment (in full or for a lesser amount if the parties agree), the judgment creditor is required to immediately sign the short "Acknowledgment of Satisfaction of Judgment" (EJ-100) portion of the "Notice of Entry of Judgment" form and file it with the Small Claims Court. This form is like a receipt and is required to end the case.

If the judgment creditor has recorded an "Abstract of Judgment" in any county where the judgment debtor owns real property, an "Acknowledgment of Satisfaction of Judgment" (EJ-100) must be filed with the court. Also, the judgment creditor must sign the form in front of a notary public and record it with the county recorder's office in each county where he or she has filed an "Abstract of Judgment."

If the judgment creditor does not file the "Acknowledgment of Satisfaction of Judgment" (EJ-100) with the court, the judgment debtor may then file a "Declaration and Order of Satisfaction of Judgment" (L-1070) with the court. If proper proof of payment is provided (for example, a cash receipt signed by the judgment creditor or a canceled check or money order made out to and endorsed by the judgment creditor), the Small Claims Court can enter a "Satisfaction of Judgment" at the request of the judgment debtor.