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LawTalk Blog



Issuing a Bankruptcy Notice or enforcing a Court judgment

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In an [earlier blog](#) I discussed the basics of chasing a debt within the framework of the Magistrates Court of South Australia. In this blog, I will discuss the process at the point where the Court makes a judgment in your favour against the person who owes you money.

Calculating the final judgement sum

The Court has made a final determination stating that person A owed person B a sum of money and person A has not repaid that sum of money. Therefore, the final judgment sum is comprised of:

- the debt itself
- +
- the creditor's costs to file the initial claim in the Court
- +
- the claimable portion of legal costs pursuant to the Court rules

Using legal terminology, following judgment the person who owes the money is termed the **Judgment Debtor** and the person owed the money is termed the **Judgment Creditor**.

How to enforce a judgement once it has been handed down?

The all too common problem is what can be done to enforce a judgment once it has been handed down.

It is regularly misunderstood that having a judgment in Court guarantees that the judgment debtor will and can pay. This is so far from the truth and is often exacerbated by debtors without any money or assets, debtors who abscond or make it difficult to find them and debtors who simply vanish. It is not uncommon for a judgment creditor to have to continue in Court just to get any payment at all following a judgment.

Under the Enforcement of Judgments Act 1991, a judgment creditor may:

1. Issue an investigation summons which compels the judgment debtor to attend Court and explain whether the person can pay the debt and if so how will it be paid. This often leads to a Court enforced payment plan for repayment over a period of time.
2. Seek a garnishee order against the judgment debtor for repayment of the debt directly through the debtor's wages. For example, the debtor's employer would have to pay the judgment creditor a dollar sum every pay cycle based on the orders of the Court. Note that this option also requires consent be given by the judgment debtor for the making of these orders.
3. Seek orders from the Court for the seizure and sale of personal property or real property to satisfy the debt. The Sheriff enforcing the orders must first seize and sell personal property to attempt to satisfy the debt before attending to the sale of any real property. Where real property is sold the debtor must undertake to pay the transaction costs of sale and expenses of the Sheriff necessary to effect the sale.
4. Seek to have a charging order registered against property owned by the judgment debtor. This option does not guarantee repayment of any monies but rather acts as security so the judgment debtor is unable to deal with their property or dispose of property without first discharging the charge by way of payment. For example, a charging order on real property or land would prevent the sale of that land by the owner until such time as the charge can be paid off and withdrawn.

The reality is that none of these options are easy wins nor do any of them guarantee return of the money.

One alternative is to issue a Bankruptcy Notice upon the judgment debtor demanding repayment.

What is a Bankruptcy Notice?

A Bankruptcy Notice is a simple form issued by the [Australian Financial Security Authority \(AFSA\)](#) based on the court judgment that acts as a demand on the judgment debtor to pay the judgment amount.

A bankruptcy notice should be served personally on a debtor and once service is effected the debtor has 21 days to make payment in full or otherwise make suitable arrangements for the payment of the judgment debt to the satisfaction of the creditor. If payment is not made within 21 days, then the judgment debtor has committed an act of bankruptcy and the judgment creditor is then entitled (within 6 months) to apply to the Federal Court to seek orders to bankrupt a person.

Is it possible to bankrupt someone when a judgement debt is owed?

It is possible to bankrupt someone in circumstances where a judgment debt is owed. The downfall of that strategy is that it costs money to pursue bankruptcy with no greater guarantee of being repaid. Where bankruptcy notices are effective is in instances where a person has assets and the prospect of losing assets in bankruptcy to them is less palatable than attending to the judgment debt.

The issue of a Bankruptcy Notice is often an effective method of chasing debts once a judgment is entered however much like the other options detailed within no one option is more likely to have you repaid. A considered approach to the circumstances will help you formulate the most appropriate course of action.

Getting the right advice and acting upon it promptly will increase the likelihood of a swift and meaningful recovery. [Contact Andersons Solicitors](#) for assistance issuing a Bankruptcy Notice or enforcing a Court judgment.

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