



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 124

What if I am served with a warrant of seizure and sale by the Sheriff?

This information sheet sets out when and how land can be seized and sold to pay a debt that is **not related to a mortgage over property**.

If you do not pay your debts, a creditor can get a court judgment against you, which is a court order saying that you must pay the debt. When this has happened, the debt is known as a **judgment debt**.

If the creditor thinks you own a house or have an interest in land that could be taken and sold to pay the judgment debt, they can ask a court for a warrant so the Sheriff can seize and sell this property.

Please note that this is different to where the lender is enforcing a mortgage for non-payment. In this situation, refer to Information Sheet 121 *What happens if my mortgage is enforced?*.

What is a warrant of seizure and sale?

If a creditor knows you own land, they might decide to issue a **warrant of seizure and sale** in order to try to force the sale of this land to pay out the judgment debt.

A creditor who has obtained a judgment for a debt can apply to the Supreme or County Court for a warrant of seizure and sale, which directs the Sheriff to seize and sell the debtor's real estate, usually at auction, so that the debt can be repaid.

What can a Sheriff do with a warrant of seizure and sale?

The Sheriff will serve you with a warrant to seize and sell your real estate, and advise you of the timeline for the sale of your property if you do not pay the debt.

The Sheriff will then put the real estate up for sale by auction with a reserve price, based on a valuation of the property.

The Sheriff can only sell the debtor's interest in the property, so if it is jointly owned the Sheriff can only sell the share that is owned by the debtor. This interest is the value of the land, minus any rates and mortgages.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

What if the property does not sell for the reserve price?

The creditor may obtain an order from the Supreme Court to sell the property at any price. The warrant has a **three-month time limit** so, if the property is not sold in this time-frame, the creditor will be required to re-register the warrant at the Land Titles Office. If this happens, it will increase the enforcement costs you may be held liable for.

What do I do if I am served a warrant to seize property?

You should speak to a financial counsellor or lawyer immediately. Depending on the amount of the judgment debt and your personal circumstances, you may be able to seek an **instalment order**, which could stop any further enforcement proceedings.

Key points

1. A warrant of seizure and sale is issued by a creditor against a judgment debtor who has an interest in land.
2. If you are served with a warrant of seizure and sale you must get legal advice or talk to a financial counsellor urgently.
3. You can stop your land or house from being sold:
 - if you pay your debt and enforcement costs before the property is auctioned
 - if you are able to file an instalment order with the court and make repayments at an acceptable rate.
4. If you do nothing, the house and/or land may be sold and you will be liable for any shortfall.

Where can I get more information?

- See also Information Sheet 114 *What is external dispute resolution and how can it help me?*, Information Sheet 115 *Referrals: where to go help with your debts*, and Information Sheet 122 *How can a creditor enforce a court judgment against me?*
- Go to www.asic.gov.au/credit for the latest updates about credit.
- Go to www.fido.gov.au/credit for credit information and resources for consumers.
- Contact ASIC's infoline on 1300 300 630 or make an enquiry at www.asic.gov.au/question.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.