



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 123

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

This information sheet sets out when and how goods belonging to you may be seized and sold to pay a debt.

What is a warrant to seize property?

A warrant to seize property is a court order that allows the Sheriff to take and sell goods belonging to you (the person named in the warrant) to pay an outstanding debt.

Why do I have a warrant to seize property against me?

If you do not pay your debts, a creditor can get a court judgment against you. This is known as a **judgment debt**.

If the creditor thinks you have property which can be taken and sold to pay the judgment debt, they can ask a court for a warrant to seize your personal property.

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

You should speak to a financial counsellor or lawyer immediately.

Generally, the Sheriff may allow you time to get the money, negotiate with the creditor, or enter into an **instalment order** (see below).

What can a Sheriff do with a warrant to seize property?

The warrant document requires the Sheriff to go to premises where you (the debtor) have personal property.

If you do not pay your debt after a court order (judgment) has been made and a warrant to seize property has been issued by the court, then the Sheriff can take personal property belonging to you and auction it to pay off the debt.

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

Do I have to let the Sheriff in?

You do not have to let the Sheriff into your home. They cannot break in or use force but may enter through an open window or door.

They can legally break into garages or other buildings not attached to the home.

Once inside, the Sheriff cannot be thrown out.

What will happen if I can't pay my debt?

If you do not pay the judgment debt, and the court has issued a warrant to seize property, then the Sheriff can inspect your property to take your goods. They will leave a notice (a **walking possession notice**) to let you know which goods they are taking.

What goods can the Sheriff take?

The Sheriff cannot take **'protected' goods**. You can keep:

- essential household goods
- tools of trade to the value of \$3150*
- a registered car or other vehicle which is used primarily as a means of transport and valued at less than \$6150.*

Note: the Sheriff will only take things that can be sold profitably.

The Sheriff also cannot take goods that are owned or partly owned by anyone not named in the warrant.

What are essential household goods?

Goods that you and your household reasonably need to live in basic comfort. Generally you can keep:

- a refrigerator and freezer
- a washing machine and clothes drier
- lounge suite
- kitchen equipment, dining table and chairs
- one television and one set of stereo equipment
- sufficient beds and bedding
- clothing
- a video/DVD recorder
- educational, sporting or recreational items—for example, books and computers used by children of the household.

What happens to the goods?

The goods will usually be left with you until the Sheriff collects them. Once the Sheriff has listed the goods, you cannot sell or get rid of them and you cannot refuse to let the Sheriff in when they come to pick up the goods. **You may receive heavy penalties if you remove the goods or refuse to let the Sheriff collect them.**

Any goods taken will be sold at auction or by private sale.

* These amounts are indexed to inflation and change from time to time.

What if the goods belong to someone else?

The Sheriff **cannot sell property owned by someone else**. If such property is taken or listed, you or the owner of the property should write immediately to the Sheriff. The letter should say who the property belongs to and include proof of ownership, such as photocopies of receipts.

The Sheriff may agree not to take the goods or may ask the court to decide ownership.

Can I stop the Sheriff from selling the goods?

Yes, by paying the debt. You can also:

- **negotiate with the creditor** about payment of the debt
- apply for an **instalment order** from a court to allow you to repay the debt by making smaller payments at fixed times
- **try to find a buyer for the goods** with the Sheriff's permission.

If you do nothing, the goods will be sold.

You should get help from a financial counsellor or seek legal advice about the best course of action.

What if I do not owe the money or I think the amount I owe is wrong?

You can ask the Sheriff to hold off any action for a few days, so as to contact the creditor and look into the situation.

If the Sheriff or the creditor won't give you time to sort it out, you should get urgent legal advice.

What happens after the goods are sold?

The Sheriff will deduct costs from the sale price (such as removal, storage and auction fees) and then pay the creditor. If any money is left over after the debt and costs have been paid, the left over money will be given to you.

If you still owe money (i.e. the goods sold did not raise enough money to pay the whole debt and costs), the creditor can keep trying to get the remaining amount owing.

What will happen if I don't have enough personal property to pay my debt?

If you do not have enough personal property to pay your debt, or have not allowed the Sheriff to access your personal property, **the warrant will remain unexecuted or partially unexecuted**. The creditor is likely to consider other ways of getting payment of the debt owed to them.

Key points

If you are served with a warrant to seize property:

1. Get legal advice or talk to a financial counsellor urgently.
2. You don't have to let the Sheriff into your home, but they can get in through open doors or break into buildings not attached to the home.
3. The Sheriff can't take:
 - protected goods
 - goods owned or partly owned by someone else.
4. You can stop your goods from being sold by:
 - paying your debt before they are sold

- negotiating with the creditor about payment of the debt
 - applying for an instalment order
 - trying to find a buyer for the goods with the Sheriff's permission.
5. If you do nothing, the goods will be sold.

Where can I get more information?

- 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.