

This document is not intended to provide legal advice. You should seek legal advice if you have any questions regarding your rights and obligations.

Suppose you buy a car, furniture or other items on credit and don't pay your debt. Or you have a bank loan or credit card balance outstanding and you don't make the payments. In such situations, the creditor may take legal action to recover the money that you owe.

This publication describes the legal action a creditor may take if you don't pay your debts. It tells you:

- the difference between secured and unsecured credit contracts
- the difference between seizure of security under a secured credit contract and seizure of property under an unsecured credit contract
- the consequences of signing a quit claim
- what happens when a creditor sues you
- what happens when a creditor gets a judgement against you
- about seizure and garnishments and how to stop them
- where to get legal help and financial counselling.

Did you promise security?

The legal action that a creditor can take depends on whether or not you promised security to the creditor when you made your credit agreement. Security, also called collateral, is money or goods that you promise to give to a creditor if you don't pay your debt as you agreed to do in your credit contract. Common types of security include savings bonds, term deposits, and property such as vehicles, furniture, or even a house. If someone has cosigned a loan for you, their money or belongings may be the security.

When you promise your property to a creditor as security, the creditor registers this information at a Personal Property Registry. At the registry, other creditors may check what is registered against your name and your property.

Secured credit contracts

With a secured credit contract, you get credit by promising specific security to the creditor.

With most secured credit contracts, if you don't make your payments as agreed, the creditor has the right to:

- seize (take) the security
- if the value of the security doesn't cover your debt, the creditor may also sue you for any money left owing, including interest and legal costs. In some cases, the court may allow the creditor to garnishee your wages and your bank account.

Of course most creditors would rather receive the money that you owe than seize your property or garnishee your wages and bank account. You may talk to your creditors or their lawyers at any time to negotiate new payment arrangements and stop legal action.

Remember, legal action can be expensive. If the creditor gets a judgement, you will not only have to pay your debt, including the interest, you will also have to pay most of the legal costs.

Seizure under a secured contract

When you miss payments on a secured contract, the creditor has a right to seize your security after he has made a reasonable effort to collect the money owing to him. If the creditor decides to seize your security, he will contact a civil enforcement agency. A civil enforcement bailiff will come to your home to seize the security.

You will have a chance to get your security back. The creditor must give you 20 days' notice before selling your security. To get it back, you will have to pay the payments that you missed, as well as the administrative costs of the seizure. You may also have to pay the full amount of the debt. These costs will be listed on the notice. If you cannot pay, the creditor has the right to sell the security.

Please note that the procedure for seizure under a secured credit contract is not the same as the procedure for seizure under an unsecured credit contract. Seizure under an unsecured credit contract is described on page four under the heading Seizure under a writ of enforcement.

Conditional sales contracts

A conditional sales contract is a special type of secured contract. When you buy goods under a conditional sales contract, the creditor owns the goods until you have paid in full. The goods are the security. For example, suppose you buy a car from a car dealership and you sign a conditional sales contract. You can drive the car off the lot immediately, but you are not really the owner until you make your last payment. If you don't make your payments, the dealer may seize the car, which is the security.

With a conditional sales contract, if you don't make your payments as agreed, the creditor may take **one** of these actions:

- seize the goods that you bought on the conditional sales contract, **or**
- sue you to get a judgement for the amount of money that you owe.

Be careful about quit claims

A creditor may try to get you to sign a quit claim. When you sign a quit claim you allow the creditor to take the security and you give

up your right to object to the seizure. The creditor does not have to go through the legal process for a seizure.

If the creditor sells the seized property but does not receive enough money to pay your debt in full, you could still be responsible for the balance. And if the seized property is worth more than what you owe, you have no guarantee that the creditor will sell it for more than what is owed. If the creditor does receive more than the balance of your debt when he sells your security, he must pay the difference to you.

Unsecured credit contracts

With an unsecured credit agreement, you get credit without promising security to the creditor. For example, you sign an unsecured credit contract when you get a credit card. You have an unsecured credit agreement with the utility company when the company connects your gas, power, water or phone.

Unsecured creditors can sue you if you don't pay your bills.

If you don't pay your utility bill, the utility company will probably cut off your services and start legal action to get the money that you owe. To have the service reconnected, you will have to pay your outstanding debt, a late penalty, a hook-up fee and a deposit.

When a creditor sues you

If a creditor is trying to collect \$25,000 or less, the case will probably be heard in the Civil Division of Provincial Court (once known as Small Claims Court). (The new \$25,000 limit for small claims actions came into effect November 1, 2002.) You will receive a civil claim (also known as a summons). The creditor (or a representative of the creditor) will deliver the claim in person to you or to a resident of your household. The claim can also be mailed to you by double registered or certified mail. The civil claim will tell you who is suing you, why they are suing, and how much money they are suing you for.

Don't ignore the claim. Take action. If you don't take action, your creditor can get a default judgement from the court. Then you will not have

the chance to negotiate or to present your side of the story.

There are three actions that you can take:

1. Negotiate a settlement.

Contact your creditor if you haven't already done so. You may be able to negotiate a payment plan that you can handle. If you and your creditor agree to a plan, the creditor should immediately inform the Civil Division of Provincial Court in writing that the matter has been settled.

2. Pay the claim.

You can pay the claim and related costs to the court, or directly to the creditor or his representative. Make sure you get a receipt. The court will only accept payment by cash, certified cheque or money order. You will not have to appear before a judge if you choose this action.

3. File a dispute note.

You will receive a form called a dispute note when you receive your civil claim. If you believe there are facts in your favour and you want to object to the creditor's claim, you can complete the dispute note and deliver it personally or by mail to the Civil Division office where the civil claim was filed. Lack of money is not a valid reason to dispute the claim.

If you receive a civil claim in Alberta, you have 20 calendar days to file the dispute note. Once you file a dispute note, the clerk of the court will let you and the creditor know when the hearing will be. At the hearing a judge will decide if the creditor has a valid claim. Remember, if you don't appear in court on the day of the hearing, the creditor may still get a judgement against you in the full amount.

If you don't file a valid dispute note within the required time, the court will award the creditor with a judgement against you.

You may hire a lawyer to represent you in the Civil Division of Provincial Court, but most people represent themselves in this court. This does not mean that the cases handled there are so simple that a lawyer is not required. However, the relatively small amount of money

being claimed by the creditor usually does not justify the expense of hiring a lawyer.

If the creditor is trying to collect over \$25,000, the case will be heard in the Court of Queen's Bench. The creditor or a representative of the creditor will deliver a *statement of claim* to you in person, or by double registered mail.

You have 15 calendar days after you receive the statement of claim to file a statement of defence or a demand of notice. Because of the large amount of money involved and the complicated procedures, most people consult a lawyer if they have to appear in Court of Queen's Bench. If you have a reasonable objection to the claim, the lawyer will file a statement of defence. If you do not have a reasonable objection to the claim, the lawyer will file a demand of notice. The demand of notice lets the court know that you want to be informed of all developments related to the claim.

Judgements

The court will award a judgement to the creditor if the judge decides that the creditor's claim is valid. This judgement is enforceable for 10 years and it can be renewed. Interest is calculated from the date of the judgement. While a judgement issued in an Alberta court can only be enforced in Alberta, a creditor may transfer the judgement to other provinces. So even if you move to another province, a creditor could pursue you to collect a judgement debt.

A judgement appears on your credit record. Even after you pay the debt, the judgement record will remain on your credit record for several years. Businesses may not be willing to give you credit if you have a judgement on your record.

After the court awards a judgement to a creditor, the creditor can take several steps to get the money that you owe:

1. Register a writ of enforcement with the Personal Property Registry.
2. Garnishee your wages or bank accounts or accounts receivable.

Each step is described in more detail on the following pages.

Writ of enforcement

After obtaining a judgement, the creditor may obtain the issuance of a writ of enforcement from the clerk of the Court of Queen's Bench and register this writ in the Personal Property Registry. This is usually the first step that the creditor makes in an attempt to collect on the judgement.

If several creditors have judgements against you, each one may file a writ. If one creditor seizes your property, or garnishees your wages or bank account, all creditors with writs against you will receive a share of the money from the seizure or the garnishment.

If you own a house or land, a creditor with a judgement against you can file a *writ of enforcement* against the title to your property at the Land Titles Office. You will have difficulty selling or mortgaging your property until the judgement is settled.

Seizure under a writ of enforcement

After registering a writ of enforcement, a creditor must go to a civil enforcement agency to seize your personal property in order to pay the judgement debt plus interest and legal costs. The bailiff can seize personal property such as vehicles and furniture. However, there are certain belongings that the bailiff cannot seize under a writ of enforcement. See *Some things cannot be seized*.

Before the creditor seizes your belongings under a writ of enforcement, the bailiff will give you a *notice of seizure*, a *notice of objection* and *information for debtor form*. The bailiff will either deliver these documents to you or post them on your door. The bailiff may take your property at this time, or he may decide to leave the property with you under a *bailee's undertaking*. If the bailiff leaves the property, it is left under the condition that you agree not to sell, remove or damage the property.

After you receive the notice of seizure, you have 15 calendar days to give a notice of objection to the civil enforcement agency that conducted the seizure. The notice will give the reasons for your objection. The court will then set a date for hearing the objection. At the hearing, a judge will decide if the creditor is entitled to your belongings. If you

don't file an objection, or make arrangements to pay your debt, the creditor may instruct the civil enforcement agency to sell the seized property by any commercially reasonable method.

You can stop a seizure

Talk to your creditor immediately. If you can start paying some of the money that you owe, the creditor may leave the seized property with you. You and the creditor may agree to a new payment plan. If you can't agree, the creditor will probably continue with the seizure. Most creditors want to collect the money that you owe them as quickly as possible. They would rather not take legal action.

Some things cannot be seized

Under Alberta's *Civil Enforcement Act*, you have the right to keep certain belongings. In most cases, you may keep:

- up to \$40,000 of the equity on the title of the house that you own and live in. (Equity is the difference between the market value of your home and any outstanding mortgages.) If the equity is more than \$40,000, the creditor can move to sell the house. You would then be allowed to keep up to \$40,000 of any money left after the mortgage is paid in full. This \$40,000 is reduced proportionately where the title to the property is held jointly, e.g. in the case of 2 joint tenants, the exemption for each is \$20,000
- household furnishings and appliances worth up to \$4,000. If the creditor is a landlord, the exemption is only \$1,000 and is restricted to specific items of furnishings that are considered necessities
- a motor vehicle up to a value of \$5,000
- tools that you need for your trade, up to a value of \$10,000
- personal property that you need to earn your livelihood, up to a value of \$10,000.

***Important:* If you pledged any specific items as security on a loan, those items can be seized if you do not make your loan payments. The amounts listed above will not apply. And, if you are still paying for goods under a conditional sales contract, those goods can be seized if you don't make payments under that**

contract. Again, the amounts listed above will not apply.

Garnishment

Another way a creditor can collect the money that you owe is by a legal procedure called *garnishment*. With a garnishment, the creditor asks the court to take money owing to you from a number of sources. The court can garnishee (take money from):

- your pay cheque
- your account at a financial institution such as a bank, treasury branch, trust company or credit union
- money owing to you by others (your accounts receivable).

Usually a garnishment takes place after a creditor obtains a judgement against you. He then files a writ of enforcement with the clerk of the Court of Queen's Bench. The creditor gets a *garnishee summons* from the court and delivers it to your employer or financial institution. The creditor can legally seize your wages or money in your bank account, up to the amount of your total judgement debt plus legal costs. Your employer or financial institution pays the money to the court and the court pays the money to the creditors.

What if the money available to be seized on the day the garnishee summons is served is not enough to cover your debt? Then the creditor will continue to garnishee your wages or accounts until your debt is paid.

A garnishee summons is effective for one year in most other cases. The garnishee must be renewed at that time.

You will not receive any advance notice of a garnishment. You will receive a copy of the garnishee summons from your employer or financial institution within 15 days, or from your creditor.

Wage garnishment

If your wages are garnisheed, you will be allowed to keep a certain amount of money each month to pay for your basic expenses:

- for a debtor with no dependents, the minimum exemption is \$800 net per month

and the maximum is \$2,400 net. Creditors can take one-half the amount between the \$800 minimum exemption and the \$2,400 maximum exemption and 100 percent of employment earnings greater than \$2,400

- for a debtor with one or more dependents, the minimum and maximum exemptions both increase by \$200 for each dependent.

These amounts are calculated from total earnings less income tax, Canada Pension Plan contributions and Unemployment Insurance contributions. If your debt is for unpaid child support or alimony under a court order, you will not be allowed to keep these amounts. For more information about garnishment related to support payments, call the Alberta Justice Maintenance Enforcement Program at (403) 422-5554.

Bank account garnishment

When your bank account is garnisheed, the creditor may take the entire amount of money that you owe. This means *all* money on deposit at your financial institution can be taken. The creditor does not have to leave you anything. If your employer deposits your wages directly into your account, the money is considered to be a bank deposit and *all* of it can be garnisheed. This does not apply to social allowance paid under the *Social Development Act*, a handicap benefit paid under the *Assured Income for the Severely Handicapped Act*, or a widow's pension under the *Widows' Pension Act*, if these payments are kept in a separate account and not mixed with any other money. Joint accounts can be garnisheed.

You may object to a garnishment

If you believe that the garnishment was not calculated correctly you should file an objection at the Court of Queen's Bench in the judicial district where the garnishment is taking place. Act quickly, before the court pays money out to your creditors. If you are objecting to a garnishment, you will probably need a lawyer.

After you pay

Once you have paid a judgement debt in full, the judgement should be discharged (removed) from the records of the Court of Queen's Bench and the Personal Property Registry. Check to make sure this is done. It's also a good idea to let the credit

bureau know that you have paid the debt. They will enter this information on your credit record.

Do you owe money to a bank?

If you have an overdue debt owing to a bank, the bank can use its *right of set-off* to recover the money. The right of set-off allows a bank to withdraw money from your accounts to pay your overdue debt. The bank does not have to give you notice or ask your permission before taking this action. The bank does not have to ask the permission of the court.

Banks may use their right of set-off to collect overdue payments on credit cards, loans or overdrafts. A bank may withdraw money that you have on deposit in any of its branches. The bank does not have to leave any money in your account.

Debt counselling

If you are having debt problems and would like to talk to a debt counsellor, you can call Credit Counselling Services of Alberta. Debt counsellors will work with you to explore your options for dealing with debt. Credit Counselling Services of Alberta offers a variety of services including:

- assessment of your debt situation and possible alternatives
- a self-help information package
- the Orderly Payment of Debt program
- information on how to deal with creditors.

All services are confidential.

Legal help

If a creditor is taking legal action against you, you may want legal advice. The following agencies can help.

Calgary Legal Guidance gives legal advice and assistance to people with low incomes who do not qualify for Legal Aid. Phone (403) 234-9266 in Calgary.

Dial-a-Law offers brief taped explanations of various aspects of the law. In Calgary, call (403) 234-9022. Elsewhere in Alberta, call toll-free 1-800-332-1091.

Lawyer Referral Service is a province-wide service for people who can afford to pay a lawyer

but need help finding one who can meet their particular needs. The service, operated by the Law Society of Alberta, provides you with the names of three lawyers in your area. You can make an appointment with one of them and receive an initial half-hour consultation at no cost. In Calgary, call (403) 228-1722. Elsewhere in Alberta, call toll-free 1-800-661-1095.

Legal Aid Society of Alberta provides legal help to people who cannot afford a lawyer. The Society has offices in Calgary, Edmonton, Fort McMurray, Grande Prairie, Hinton, Lethbridge, Medicine Hat, Peace River, Red Deer, St. Paul and Wetaskiwin.

The Legal Resource Centre at the University of Alberta provides legal information. In Edmonton, call (780) 492-5735.

Student Legal Assistance at the University of Calgary offers legal help to people with low incomes. Phone (403) 220-6637 in Calgary.

Student Legal Services at the University of Alberta offers legal help to people with low incomes. In Edmonton phone (780) 492-2226.

Where to get more information:

Credit Counselling Services of Alberta
Calgary: (403) 265-2201
Edmonton: (780) 423-5265
toll free in Alberta: 1-888-294-0076 (toll-free)
www.creditcounselling.com

Alberta Government Services
Consumer Services Branch
Edmonton (780) 427-4088
toll free in Alberta 1-877-427-4088
www.gov.ab.ca/gs

A current version of this document is available on the Alberta Government Services' Web site at www.gov.ab.ca/gs.

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