

TO MAKE A REQUEST FOR COURT ENFORCEMENT UNDER THE F.M.E.A.

Rule 17(2)

What can you do if the debtor does not make payments on a maintenance order, pays late, or does not always make payments in full?

- You can enrol your maintenance order with the Family Maintenance Enforcement Program (FMEP). If you enrol, the debtor must make maintenance payments to the FMEP, and they will take enforcement action for you if payments are not made in full and on time. The FMEP will complete all forms (including this request form, if it is required). You may obtain information from the registry on how to enrol with the FMEP.
- You can hire a lawyer to represent you and take enforcement action for you.
- You can take enforcement action through the court on your own.

Because there are a number of enforcement options, you will probably need legal advice to choose the best option for your case, even if you decide to take action on your own. The most commonly used enforcement options are:

• Garnishing wages or bank accounts

Garnishment is a way of obtaining money that someone else owes to the debtor before it goes to the debtor. Most often, people garnish wages or bank accounts. There are limits on the amount you can obtain by garnishment. You can collect only the amount of arrears owing, not the regular maintenance payments which will be due. Also, if you garnish wages, the most you can garnish is one-half of the first \$600 per month, and one-third of wages in excess of \$600 per month, after the normal payroll deductions. The minimum exemption is \$100 per month (or is \$200 per month if the debtor has dependents). If you garnish a bank account, you can garnish the full amount in the account.

• Seizure and sale of the debtor's goods under a warrant of execution

A warrant of execution allows you to ask a bailiff to take the debtor's personal belongings and sell them at public auction. You can only collect one year's arrears of maintenance by this method, unless the court orders otherwise.

• Default hearing

The court can require the debtor to come to court, to answer for the failure to make maintenance payments in full or on time as ordered. Unless the debtor gives a good reason for not paying, the court may make an enforcement order. An enforcement order can:

- direct the debtor to be imprisoned, if future payments are not made, or
- direct the debtor to provide information, especially financial information (eg. statement of income & expenses (reporting order)), to the court, or
- direct the attachment of money owing to the debtor for wages or salary, so that the money attached is redirected through the court to you.

The court can also order the attachee to come to court for failure to pay monies as required. The court may make an enforcement order against an attachee.

Using the request for court enforcement form to enforce maintenance and arrears

You will use the request for court enforcement to indicate your choice of enforcement action. You will also need to file an affidavit setting out your evidence of the arrears and any other evidence you may wish to submit. Additional forms are necessary if you request a garnishing order or a warrant of execution against the debtor's goods, but not if you request a summons or a warrant for arrest. The registry will give you any forms that you need.

What else can you use this request form for?

- To require the debtor to attend court for failing to file a statement of finances or other document.
- To require the debtor to attend court for failing to report by filing a statement of income and expenses (reporting order).

Step 1

COMPLETE the REQUEST FOR COURT ENFORCEMENT form and any supporting AFFIDAVIT(S). You may use a typewriter or print clearly and firmly. (Note: the Director of Maintenance Enforcement is permitted to submit evidence by statement of arrears.)

If you are requesting a **garnishing order**, also **COMPLETE** a GARNISHING ORDER and an AFFIDAVIT IN SUPPORT OF GARNISHING ORDER. (Note: If the debtor is a federal government employee, ask the registry for information, as the procedures are a bit different and you must complete additional forms.)

If you are requesting a **warrant of execution** against the debtor's goods, also **COMPLETE** a WARRANT OF EXECUTION and an AFFIDAVIT OF ARREARS. Before completing these forms, you must

- obtain information which shows that the debtor owns the goods you want seized, and identifies the goods and their location.
- contact the bailiff to find out the amount of money required as a deposit toward the bailiff's fee to execute the warrant. (If sufficient money is recovered from the sale of the debtor's goods, you will get back the deposit).



Step 2

FILE the completed forms by taking or mailing them to the registry where your file is. The staff will apply the registry stamp and return the copies you need for your records.

If you are requesting a **summons**, the registry will set a court date and issue a summons to the debtor.

If you are requesting a **garnishing order**, the registry will also return the copies you need to serve on the debtor and the garnishee (that is, the debtor's employee or bank, or whoever else is named in the garnishing order). If you prefer that the Sheriffs office serve the documents, **COMPLETE** a REQUEST FOR SERVICE OF DOCUMENTS and file it with the registry along with your other forms.

If you are requesting a **warrant of execution**, you must attach to the completed forms

- a cheque in the amount of the deposit required
- written information, such as a Motor Vehicle Branch search, identifying the goods and their location, and proving that the debtor owns them.

If you are requesting a **warrant for arrest**, the registry will set a court date and notify you to attend.



Step 3

If a **summons** is issued, you will be notified of the date of the court appearance. The court will serve the debtor with copies of the summons and accompanying documents. The purpose of service is to be sure that the debtor knows what you are asking for and the court date. If you prefer, you can make your own arrangements for service. The documents must be served on the other party in person, by any adult other than yourself, or you may serve them by mail or by fax (if the debtor's address for service includes a fax number).

To prove that you have served a summons, **COMPLETE** an *AFFIDAVIT OF PERSONAL SERVICE if it was personally served, or an *AFFIDAVIT OF SERVICE if you mailed or faxed it. Bring it to court on the hearing date unless you have already filed it.

If a **garnishing order** is issued, you must **SERVE** the documents on the garnishee and on the debtor, either by serving them personally or by registered mail, unless you have made a request for the Sheriffs office to serve them.

To prove you have served a garnishing order, **COMPLETE** an AFFIDAVIT OF SERVICE* if you personally served them, or a CERTIFICATE OF SERVICE* if you used registered mail. Then **FILE** this proof of service with the registry. If the court issues a warrant for arrest, you will be notified when the debtor is arrested and brought before the court.

***NOTE:** these forms are printed on the back of the 'proof of service' copy of the summons and garnishing order.

Court File Number:

Copy the court file number, FMEP number (if any) and court location from the order.



Case Name:

The name of the case does not change. Copy it exactly as it appears on the order you want enforced.



Filed by:

You must be sure that the address for service you give is correct because this is where the registry will send any further notices or information to you. If your address changes at any time, you must file a NOTICE OF CHANGE OF ADDRESS form with the court registry, and serve a copy of it on the other party.



IMPORTANT NOTE: If you do not want the other party to know your residential address, advise the court registry in writing and provide another address at which you can receive information and notices. Failure to accept service at address provided could result in a final order being made in your absence.



Notice to:

Provide the name, address and telephone number of the other party. You may also include the fax number, if you know it.



Step 4

If a **garnishing order** resulted in money being paid into court, the money will be paid out to you, unless the debtor or the garnishee has filed a dispute within 10 days of being served with the garnishing order.

If a **warrant of execution** is issued, a bailiff will attempt to seize goods from the debtor. The bailiff will give the debtor a copy of the warrant. Unless the debtor pays the bailiff the amount of arrears owed to you and the bailiff's fee, the bailiff will sell the goods. The proceeds of the sale will be used to cover the bailiff's fee and the maintenance arrears you are entitled to. The balance, if any, is paid to the debtor.

Attach additional form(s) indicated.



Sign your name and state today's date. State name of lawyer, if any.





REQUEST FOR COURT ENFORCEMENT UNDER THE FAMILY MAINTENANCE ENFORCEMENT ACT

In the Provincial Court of British Columbia

Court File Number:
FMEP No.:
Court Location:

Case name
as it appears on the order you want enforced.

In the case between:

NAME _____

And:

NAME _____

Your current address for service.

Filed by:

NAME _____ APPLICANT/CREDITOR

ADDRESS _____ CITY _____

PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

Other party's address for service.

Notice to:

NAME _____ RESPONDENT/DEBTOR

ADDRESS _____ CITY _____

PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

What order does your request relate to?
Fill in any required information and check the appropriate box

An order* was made on _____ DATE
at _____ COURT LOCATION

- _____ and a copy of the order is attached
- requiring the debtor to pay maintenance.
 - requiring the attachee to comply with attachment order/notice of attachment.
 - requiring the debtor to pay arrears.
 - requiring the debtor to report by filing a statement of income and expenses.
 - requiring the debtor to provide a statement of finances or other prescribed document.

What are you asking for in this request?
Check the appropriate box(es) and fill in any required information. Attach additional form(s) indicated.

In connection with this order, I request:

- a summons requiring the debtor to provide a statement of finances or other prescribed document.
- a summons requiring the debtor to attend a default hearing. An affidavit of arrears or statement of arrears is attached.
- a summons requiring the attachee to attend a default hearing. An affidavit of arrears or statement of arrears is attached.
- a summons requiring the debtor to attend a committal hearing. An affidavit of arrears or statement of arrears is attached.
- a summons requiring the debtor to appear in court for failing to comply with the attached order to file a statement of income and expenses. A supporting affidavit is attached.
- a summons requiring the debtor to appear in court for failing to comply with the attached order to file a statement of finances or other prescribed document. A supporting affidavit is attached.
- a garnishing order. A completed garnishing order form and supporting affidavit are attached.
- a warrant of execution against the debtor's goods. A completed warrant of execution form and supporting affidavit are attached.
- a warrant for arrest of the debtor for failing to comply with the attached order to file a statement of finances, a statement of income and expenses (reporting order), or other prescribed document. A supporting affidavit is attached.
- a warrant for the arrest of the debtor, who is about to leave British Columbia.

Sign your name and state today's date.

Dated _____

Signature

State name of lawyer, if any.

Creditor's lawyer

* "Order" includes a written agreement filed under the Family Relations Act (Section 121).

REQUEST FOR COURT ENFORCEMENT UNDER THE F.M.E.A.



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In the Provincial Court of British Columbia

Court File Number:
FMEP No.:
Court Location:

Case name

In the case between:
NAME _____
And:
NAME _____

Other party's address for service.

Filed by:
NAME _____ APPLICANT/CREDITOR
ADDRESS _____ CITY _____
PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

Notice to:
NAME _____ RESPONDENT/DEBTOR
ADDRESS _____ CITY _____
PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

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 requiring the debtor to pay arrears.
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What is the other party asking for in this request?

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Dated _____

Creditor's lawyer
Signature _____

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FMEP No.:
Court Location:

Case name

In the case between:
NAME _____
And:
NAME _____

Other party's address for service.

Filed by:
NAME _____ **APPLICANT/CREDITOR**
ADDRESS _____ CITY _____
PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

Notice to:
NAME _____ **RESPONDENT/DEBTOR**
ADDRESS _____ CITY _____
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at _____ COURT LOCATION _____ and a copy of the order is attached

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Signature box

Signature

Creditor's lawyer

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NAME _____

And:

NAME _____

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ADDRESS _____ CITY _____

PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

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