

Small Claims Court of Nova Scotia

Enforcing a Small Claims Court Order:

A Guide for Creditors



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This guide provides general information only. It does not explain the law. Court staff can give general information about how the court works, and about court rules and procedures. Court staff cannot give legal advice. You should speak to a lawyer for legal advice about your situation.

Sometimes when you win a judgment in Small Claims Court, the person who owes you money will pay it promptly, or make arrangements for payment with you which are then followed. At other times, the person who has been ordered to pay ignores the order—they won't or can't pay. If this is the case, there are a number of ways to enforce a Small Claims Court order.

Before you start

Enforcing a court order is complicated. Review this entire guide to learn about what steps you must take, the information you will need about the debtor, and the fees you will have to pay to enforce the court order.

Words to know

Each word shown in colour is defined in this section.

Certificate of judgment: You can register this document at the *Personal Property Registry* to limit the *debtor's* ability to sell personal property. You can request the Small Claims Court administration office to prepare this document. Make your request in writing.

Court order: The adjudicator's decision is made into a court order prepared by the Small Claims Court administration office. The court order is one of the documents you can register in the *Personal Property Registry*.

Creditor: The individual or business who is owed money or the return of goods under a court order is the creditor.

Debtor: The individual or business who owes money or the return of goods under a court order is the debtor.

Execution Order: You need this document if you want the *Sheriff's Office* to collect money or seize assets from the *debtor*. You can request this document be prepared by the Small Claims Court administration office. Make your request in writing.



Land Registration Office: This office maintains the real property registry where you can register a *certificate of judgment*.

Personal Property Registry (PPR): You can register a court order, execution order, or certificate of judgment in the PPR to limit the debtor's ability to sell personal property. You will be given a *verification statement* as proof of registration.

Recovery order: You need this document if you want the *Sheriff's Office* to seize the goods to be returned under the court order. You can ask the Small Claims Court administration office to prepare this document. Make your request in writing.

Sheriff's Office: You can ask the Sheriff to help you collect the money or goods owed to you under the court order. The Sheriff's Office can also seize personal property from the debtor. These items can be sold to raise money owed to you under the court order.

Verification statement: This is the report you receive from the *Personal Property Registry* when you register your court order (or execution order or certificate of judgment).

Form 46: You register this document at the *Land Registration Office* to limit the debtor's ability to sell or mortgage land. You can request the Small Claims Court administration office to prepare this document. Make your request in writing.

What's the first step?

Decide what enforcement steps you want to take. You have five options:

Option 1

Get a certificate of judgment to register at the Land Registration Office. This limits the debtor's ability to sell or mortgage land without satisfying your court order. You can register the certificate of judgment even if the debtor

doesn't presently own land if you think he or she may own land in the future. Registration can be renewed every five years up to three times (for a total of 20 years).

Option 2

Register the court order in the Personal Property Registry (PPR). Registration of your interest in the debtor's personal property gives you priority over other creditors who register after you and may affect the debtor's credit rating. You can also register an execution order or a certificate of judgment instead of the court order. When you register your document you will be given a verification statement. Keep this as proof of registration. Registration must be renewed annually and is required if you are requesting the Sheriff to act on an execution order. You can register for more than one year at a time.

Option 3

Get an execution order and ask the Sheriff's Office to garnish wages or seize money from the debtor.

If you know where the debtor is employed or has money deposited you may want the Sheriff's Office to take steps to collect funds. The Sheriff's Office will serve third parties (such as the debtor's employer and bank) with an execution order. The execution order requires third parties to pay money from the debtor's wages or other money to the Sheriff on your behalf. The Sheriff's Office will require an execution order, a verification statement and additional information and fees as set out below.

Option 4

Get an execution order and ask the Sheriff's Office to seize personal property (other than money) from the debtor. If you know about items owned by the debtor you can ask the Sheriff's Office to seize these items for sale. You will be responsible for all costs associated with the seizure and sale of the property. The Sheriff's Office will require an execution order, a verification statement and additional information and fees as set out below.

Option 5

Get a recovery order and ask the Sheriff's Office to seize goods ordered returned by the adjudicator. If you have a good description of the goods and know their location, you can ask the Sheriff's Office to seize the goods for return to you. The Sheriff's Office will require a recovery order and other information and fees as set out below.

Option 1: Get a certificate of judgment to register at the Land Registration Office

Fees must be paid to the Land Registration Office to register the Form 46. Renewal can be done every 5 years after the initial registration, for a maximum of 3 times. If a judgement is not renewed within the 5 year term it cannot be renewed or re-recorded. Check with staff at the Land Registration Office for current fee.

Step 1:

Make a request in writing to the Small Claims Court to have a Form 46 prepared. You can fax, e-mail, or mail your request to the court administration office handling your case.

You must include the following information in your request to the court:

- claim number
- your full name
- your full civic or mailing address, including postal code
- the name of your lawyer, if you were represented
- the amount of the judgment
- the full name of the debtor
- the full civic or mailing address for the debtor, including postal code
- the name of the debtor's lawyer, if the debtor was represented

You must include **one or more** of the following pieces of additional information about yourself:

- date of birth
- occupation and employer
- designations (for example Dr., Rev., Hon.)
- names of spouse, parents, or children
- AKA or alias (nickname or significantly different given name, not a short form or different spelling)
- name of your business if limited (Ltd.) or incorporated (Inc.)
- Registry of Joint Stocks business number

You must include **one or more** of the following pieces of additional information about the debtor:

- date of birth
- occupation and employer
- designations (for example Dr., Rev., Hon.)
- names of spouse, parents, or children
- personal characteristics (such as personal description, vehicle description)
- AKA or alias (nickname or significantly different given name, not a short form or different spelling)
- name of debtor's business if limited (Ltd.) or incorporated (Inc.)
- Registry of Joint Stocks business number

If you have **more than one** piece of additional information about the debtor, include **all** the information you have. Providing as much information as possible about the debtor will help distinguish the debtor from other people or businesses with the same or similar name.

Step 2:

The court will mail you the Form 46.

Step 3:

Take the Form 46 to the Land Registration Office in the county where the debtor's land is located. Pay the current fee and staff will record the Form 46 in the Real Property Registry. This creates what is called a lien on the debtor's property and the land cannot normally be sold or mortgaged without dealing with your lien. The lien lasts 5 years. You must pay an additional fee to renew your lien. You can only renew a lien 3 times (for a total of 20 years). The Land Registration Office will **not** notify you when the lien is due to expire. **It is your responsibility to keep track of the expiry date and renew the registration before the end of each five-year period.** If the registration of your Form 46 is not renewed before the end of each five-year period it can never be renewed. It will no longer bind the land of the debtor.

Step 4:

If one year passes and you still have not been paid in full by the debtor, you can ask the Sheriff's Office to take steps to sell the debtor's land. It is recommended that you review the Sale of Land under Execution Act for the additional steps you must take to get the debtor's land sold by the sheriff.

The Land Registration Office will not take steps to collect the money owed to you under the court order. You will be paid if the debtor needs to clear your lien in order to sell or mortgage their property. You can also force the sale of the debtor's property. In this case, you will get paid if there is sufficient equity in the property to pay you.

Option 2: Register the court order in the Personal Property Registry

Fees must be paid to register a document in the Personal Property Registry (PPR) and renew registration annually. Renewal of the registration must be made within 30 days of the expiry date or both the initial fee and the renewal fee will have to be paid to re-register. Check with PPR staff for current fee information.

Step 1:

The Personal Property Security Act General Regulations give directions on how to use the PPR system. The regulations are available at the Land Registration Office and on the internet at <www.gov.ns.ca/just/regulations/regs/ppsgen.htm>.

It is recommended that you read the sections pertaining to registration before proceeding. The most important sections are sections 19, 20, and 21, which set out rules for listing the debtor's name in the registration. If these rules are not followed, your registration may not be valid, and this may affect your ability to collect on the court order.

Step 2:

Take the following documents to the Personal Property Registry office:

- Court order (or execution order or certificate of judgment) obtained from the court administration office
- Two pieces of identification (one of which **must** be a valid driver's licence, passport, health card, or birth certificate)

Locations of the PPR offices are listed at the end of this guide. Alternatively, you can engage a private searcher to register the document on your behalf for an additional fee (see "searcher of records" in the yellow pages).

Step 3:

At the Personal Property Registry office you will be required to complete a computerized registration form. If you are not comfortable with computers you may wish to bring along a friend or relative to assist you. Staff are also available to guide you throughout the process.

Step 4:

You will receive a verification statement. Keep this document as proof that your court order (or other document) has been registered. You will need the verification statement for options 3 and 4 below.

Step 5:

You must deliver a copy of the verification statement to the debtor within 30 days of registering your court order (or other document) in the Personal Property Registry. Delivery can be made by leaving a copy of the verification statement with the debtor or mailing it to them by registered mail.

Step 6:

You are responsible for keeping track of when the PPR registration will expire. You have 30 days from the date of expiry to renew the registration. You have 30 days from the date of expiry to renew the registration. If the registration is renewed more than 30 days after the date of expiry then you must pay the initial registration fee and the renewal fee. You can register for more than one year at a time. You are responsible for keeping the PPR registration current for the period of time the Sheriff has been asked to act under options 3 and 4 below.

The Personal Property Registry office will not take any steps to collect the money owed to you under the court order. If you want to take steps to collect the money, you will have to follow options 1, 3, or 4 in this guide. Registration in the PPR gives you priority over other secured creditors who register **after** your registration.

Option 3: Get an execution order and ask the Sheriff's Office to garnish wages or seize money from the debtor.

Fees must be paid to the Sheriff's Office for garnishment of wages or seizing money from the debtor. The Sheriff's fees may accumulate beyond the initial fee, depending on the time required to serve the execution order and collect funds. The Sheriff will try to recover the costs from the debtor. Check with the Sheriff's Office for the cost and fees section of the Courts of Nova Scotia website at <<http://www.courts.ns.ca/General/fees.htm>>

Step 1:

Make a request in writing to the Small Claims Court to have an execution order prepared. Include your claim number and the names of the parties involved in the case. You can fax, e-mail, or mail your request to the court administration office handling your case.

Step 2:

The court will mail you the execution order.

Step 3:

Register the court order or the execution order in the Personal Property Registry (PPR). (See steps 1 to 6 in option 2 above.) Keep the verification statement you receive at the PPR. You will need to give a copy to the Sheriff's Office.

Step 4:

Prepare an information sheet for the Sheriff's Office. A copy of the information sheet is attached to this guide. You can write a letter instead of completing the information sheet. Make sure your letter to the Sheriff's Office states all the information you know about the following:

- debtor's employer, including the type of employment and the employer's name, address and phone number
- if the debtor is self-employed as a sole proprietor, any account receivable information
- all banks with whom the debtor has accounts (including bank branch and address)
- your name, address and phone number where you can be reached
- any other information which may be helpful to the Sheriff

It is important that you provide as much information as possible in order for the Sheriff's Office to act on the execution order. If you do not have enough information about the debtor, the Sheriff may not be able to help you.

Step 5:

Take all of the following to the Sheriff's Office:

- the original execution order plus three copies
- the verification statement from the Personal Property Registry
- your letter or information sheet about the debtor
- the deposit

Use the location closest to the debtor's employer, bank, or other third party from whom the Sheriff will collect funds.

There are special time limits and additional steps you must take if you want the Sheriff to garnish wages of an employee of the federal government or a member of the Canadian Armed Forces.

If the debtor is an employee of the federal government, you must serve the execution order on the federal government within 30 days of the execution order being issued by the court. You must also prepare an Application to Garnishee form and provide this to the Federal Garnishee Registry along with a certified copy of the certificate of judgment and a copy of the execution order. The Application to Garnishee form is available online at

www.canada.justice.gc.ca/en/ps/flas/gapda.html or by contacting the Garnishment Registry at Department of Justice Canada, Suite 1400, Duke Tower, 5251 Duke Street, Halifax, NS B3J 1P3.

If the debtor is a member of the Canadian Armed Forces, you must give notice of your intention to garnishee to the debtor's commanding officer. Make sure you include all of the following in your notice:

- the original or a certified copy of the court order or certificate of judgment
- the identity and location of the court in which the judgment was obtained (and of any other court in which the judgment was registered)
- any information that may assist the commanding officer to identify the debtor (for example service number, rank, last known unit, and Military occupation)
- your name and full address and, if the payments are to be sent to someone other than you, then the name and full address of that third party (for example the Sheriff's Office)
- an address where notices and documents may be forwarded either to you or, if appropriate, to any person authorized by you

- a recent statutory declaration from you stating that the amount mentioned in the execution order has not been or is not being paid by or on behalf of the debtor

The execution order must then be served by the Sheriff's Office at least 30 days, but no more than 60 days, after you have served the commanding officer with your notice of intention to garnishee.

For more information about the requirements see <http://www.admfincs.forces.gc.ca/qr_o/vol3/ch207_e.asp#207.031>, or contact the Office of the Judge Advocate General at (902) 765-1494.

Step 6:

Keep current the registration of your court order (or execution order) at the Personal Property Registry for the period of time the Sheriff has been asked to garnish the debtor's wages or seize the debtor's money.

Step 7:

The Sheriff's Office will serve different people with the execution order. If you have provided sufficient information about the debtor's employer, the Sheriff will serve that person or business to garnish the debtor's wages. This means a portion of the debtor's wages will be sent to the Sheriff's Office instead of being paid to the debtor. If you have provided sufficient information about the debtor's bank, the Sheriff can seize money from the debtor's bank account. Depending on what other information you have provided, the Sheriff will serve other third parties to seize the debtor's money.

The Sheriff may not be able to enforce the order if the person is not employed or there are no monies in the debtor's bank account. Not all the debtor's wages will be garnished. The Sheriff can only garnish wages to a maximum of 15 per cent. If the debtor's wages are deposited to the debtor's bank account, this will limit how much money can be seized from that bank account.

Step 8:

Once the Sheriff has collected money for you, a cheque will be sent to you in the mail. There must be at least \$200 collected or your file must be ready to be closed and final disbursements made before the Sheriff will send you a cheque. If the amount of the court order plus the Sheriff's fees is collected in full. The deposit you paid will be refunded.

If the debtor has more than one execution order against them, the funds will be distributed among all creditors with execution orders on file. Creditors are responsible for determining priority based on registration in the Personal Property Registry.

Option 4: Get an execution order and ask the Sheriff's Office to seize and sell personal property (other than money) from the debtor

Fees must be paid to the Sheriff's Office for seizure and sale of personal property. You must pay a deposit. You are also responsible for the following

- all costs associated with the seizure of personal property including towing, moving, and storage fees
- all costs associated with the selling of the personal property including advertising the public auction two times in a public newspaper

Check with Sheriff's Office staff for additional information.

- You are responsible for all costs associated with selling the personal property including advertising the public auction two times in a public newspaper.

Fees are subject to change without notice. Check with Sheriff's Office staff to confirm the current fee.

Step 1:

Make a request in writing to the Small Claims Court to have an execution order prepared. Include your claim number and the names of the parties involved in the case. You can fax, e-mail, or mail your request to the court administration office handling your case.

Step 2:

The court will mail you the execution order.

Step 3:

Register the court order or the execution order in the Personal Property Registry (PPR). (See steps 1 to 6 in option 2 above.) Keep the verification statement you receive at the PPR. You will need to give a copy to the Sheriff's Office.

Step 4:

Write a letter to the Sheriff's Office setting out all the information you have about the personal property to be seized by the Sheriff. Include as much as possible about the following:

- Physical description of the property
- Serial, registration, or licence numbers for the property
- Location of the property
- Other information which may be helpful to the Sheriff

Some personal property is exempt from seizure under an execution order. It is recommended you read section 45 of the Judicature Act for a list of exempt property.

It is important to provide as much information as possible in order for the Sheriff's Office to seize property. If you do not have enough information about the debtor's property, the Sheriff may not be able to help you.

Step 5:

You may be required to post a security bond with the Sheriff's Office that is equal to 1.25 times the fair market value of the personal property to be seized from the debtor. This bond may be cash (which will then be held in trust by the court) or a letter of indemnification from a lawyer or affidavits from two sureties. The purpose of the bond is to protect the Sheriff's Office from any liability resulting from the seizure of the debtor's personal property. Speak to staff at the Sheriff's Office to determine if a bond will be necessary in your case.

Step 6:

Take all of the following to the Sheriff's office:

- the original execution order plus three copies
- the verification statement from the Personal Property Registry
- your letter about the debtor's personal property
- your security bond (if necessary)
- the deposit

Use the location closest to where the personal property is located.

Step 7:

Keep the registration of your court order (or execution order) current at the Personal Property Registry for the period of time the Sheriff has been asked to seize the debtor's personal property.

Step 8:

The Sheriff's Office will take steps to seize the debtor's personal property. You will be responsible for costs associated with the seizure, including towing, moving, and storage.

Step 9:

Once the property is seized by the Sheriff's Office it can be sold at public auction. The sale of the property must first be advertised two times in a public newspaper. You must pay the cost of these advertisements. The Sheriff's Office will ask you for a deposit prior to advertising the sale.

Step 10:

The personal property will be sold at a public auction.

Step 11:

The Sheriff's Office will mail a cheque to you for the amount of funds raised from the sale of the debtor's personal property. Your deposit will be returned to you if the Sheriff's Office has been able to collect the full amount owing on the execution order.

Option 5: Get a recovery order and ask the Sheriff's Office to seize goods ordered returned by the adjudicator

Fees must be paid to the Sheriff's Office to seize goods ordered returned. For additional fee information, check with the Sheriff's Office staff or see the costs and fees information on the Courts of Nova Scotia website at <<http://www.courts.ns.ca/General/fees2.htm>>.

Step 1:

Make a request in writing to the Small Claims Court to have a recovery order prepared. Include your claim number and the names of the parties involved in the case. You can fax, e-mail, or mail your request to court administration office handling your case.

Step 2:

The court will mail you the recovery order.

Step 3:

Write a letter to the Sheriff's Office describing the goods to be returned to you. Include as much detail as possible, including the location of the goods and any serial, registration or licence numbers for the goods.

It is important for you to provide as much information as possible in order for the Sheriff's Office to act on the recovery order. If you do not have enough information about the goods to be returned, the Sheriff may not be able to help you.

Step 4:

Make a copy of the recovery order for each person in possession of the goods that are to be returned to you.

Step 5:

Take all of the following to the Sheriff's Office:

- the original recovery order (or a certified copy)
- additional copies of the recovery order for the person(s) holding the goods to be recovered
- your letter
- the Sheriff's initial fee

Use the location closest to where the goods are located.

Step 6:

The Sheriff will attempt to collect the goods. You or someone you designate must be available to receive the goods. The Sheriff will not transport or store the goods for you.

What if the debtor appeals the order I am trying to enforce?

If the debtor appeals the order, the original order continues to be in effect and you can continue to take enforcement steps. The debtor can try to stop the enforcement process by appealing the order and applying for a stay of the order. When the court grants a **stay**, it means no further enforcement steps can be taken until the appeal is heard.

What if funds or goods from the debtor cannot be collected?

If no funds or goods are collected, your deposit will be remitted to the Province of Nova Scotia in payment of the Sheriff's fees. The fee is required to cover travel and service costs. If the Sheriff's Office cannot find a way to collect on the execution order or recovery order, or if the debtor has no money or goods to collect, then you will be notified by mail. The service fee will not be returned.

But I will eventually get my money, won't I?

If the debtor simply can't pay, there isn't much you can do. But that is not to say you won't ever collect. The person may get a job in a few months, for example. You still have your court order and you may be able to collect it then. It is your responsibility to provide the Sheriff's Office with any new information about the debtor. If they obtain new employment or open a new bank account, then it is your responsibility to give this new information to the Sheriff's Office. This may enable the Sheriff's Office to collect on the execution order.

Where to go for more information

The Small Claims Court administration office can provide you with a brochure on Small Claims Court procedures. The Small Claims Court Act and Regulations are available online at <www.courts.ns.ca> and in law libraries. For information about representing yourself, see <www.gov.ns.ca/just/repselfmain.htm>. Information about Nova Scotia courts is available at <www.courts.ns.ca>.

Prepared by Court Services Division of Department of Justice, Nova Scotia
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Land Registration Offices and Personal Property Registry Offices

Annapolis

396 Main Street, Box 39
Lawrencetown, NS B0S 1M0
584-7185

Antigonish

155 Main Street
Antigonish, NS B2G 2B6
863-2677

Cape Breton

500 George Place, PO Box 157,
Sydney, NS B1P 1K6
563-3540

Colchester

136 Esplanade Street
Truro, NS B2N 2K3
893-5868

Cumberland

9 Havelock Street, PO Box 233
Amherst, NS B4H 3Z2
667-3131

Digby

4451 #1 Hwy, Box 209,
Weymouth, NS B0W 3T0
837-5111

Guysborough

Church & Pleasant Streets, PO Box 123,
Guysborough, NS B0H 1N0
533-4011

Halifax

5151 Terminal Road, PO Box 2205,
Halifax, NS B3J 3C4
424-8571

Hants

80 Water Street, PO Box 2349
Windsor, NS B0N 2T0
798-3015

Inverness

Main Street, PO Box 178
Port Hood, NS B0E 2W0
787-2281

Kings

87 Cornwallis Street, PO Box 7
Kentville, NS B4N 3V9
679-4320

Lunenburg

270 Logan Street, PO Box 277
Bridgewater, NS B4V 2W9
543-5095

Pictou

69 Water Street, PO Box 490
Pictou, NS B0K 1H0
485-4223

Queens

249 White Point Road, PO Box 727,
Liverpool, NS B0T 1K0
354-5715

Richmond

2575 Hwy. #206, PO Box 119
Arichat, NS B0E 1A0
226-2818

Shelburne

136 Hammond Street, PO Box 421,
Shelburne, NS B0T 1W0
875-3409

Victoria

495 Chebucto Street, PO Box 353,
Baddeck, NS B0E 1B0
295-3656

Yarmouth

2A Second Street,
Yarmouth, NS B5A 1T2
742-3125

Sheriff's Office information Sheet

Information to assist the Sheriff with execution orders

1. Name of debtor's employer (please include address if known and type of employment):

2. If debtor(s) is self-employed, as a sole proprietor, please provide account receivable information:

3. Bank branch which debtor(s) deals with (please include bank's address):

4. Your name, address, and phone number where you can be reached:

5. Any other information which may help the Sheriff:

Important Notice

Sheriffs will not take any steps to enforce an execution order until the creditor provides the Sheriff's Office with proof of registration in the Personal Property Registry of judgment. A report known as a verification statement is provided to the creditor upon registration and a copy of this verification statement is sufficient proof of registration.

