

ENFORCING & COLLECTING ON A JUDGMENT

Writ of Continuing Garnishment On Earnings of a Natural Person

CRS 13-54-104(2)(a)(1);
CRCP 103§1, 403 §1; CRCP 369

“Wages” garnishment

- Up to 25% of judgment-debtor’s disposable earnings for non-child support debts
 - limited to 180 days
 - “disposable earnings” = 1) after deductions required by law and 2) after court-ordered health insurance pursuant to child support order.
- CRS 13-54-104 & 13-54-104(b)(I)
- such earnings are reachable after deposit in the bank, but 25% rule still applies
 - debtor may prove exemption if applicable

Writ of Garnishment

Garnishing a Bank Account

Liens against Property

Writs of Execution

Writ of Garnishment

(on personal property other than earnings of a Natural Person)
With Notice of Pending Levy

CRCP 103 §2; 403 §2

- Used to seize monetary assets being held on behalf of the debtor by a fiduciary (*bank*)
 - 25% limit if debtor = natural person
 - Service of the Writ of Garnishment entitles the creditor to the assets held by the fiduciary at the date and time when the Writ is served
 - **Tip:** Serve the Writ when there is money to be had
 - Writ is ineffective as to monies leaving before service, or entering after service
 - Once the Writ is served on the fiduciary, Notice of Levy must be served on debtor, including a list of possible exemptions, which the debtor may claim w/in 10 days of service by written claim to the court.
- CRCP 103; 403 §6(c)
- Hearing on the merits w/in 10 days of claim
 - Burden of proof on debtor

For a Simple Garnishment of Wages Submit to the Court:

- Writ of Continuing Garnishment *jdf-82 (CRCP Form 26)*
 - Usually for 180 days
 - Plus interest due at 8%
- Attach a copy of the judgment

Once the court issues the Writ,

- Personally serve the Employer -w/ two copies of the Writ and - two copies of the Calculations of the Amount of Exempt Earnings Worksheet (CRCP Form 27), and
- A blank Objection to Calculation of the Amount of Exempt Earnings (CRCP Form 28)

- Verify Return of Service is In The Court file

Employer must respond within either:

- *between 5 and 10 days after the first time the judgment debtor is paid by the employer after being served, or*
- *no more than 40 days after the employer is served, which ever is less*

Failure of the employer to respond in a timely fashion subjects the employer to possible default judgment

Writ Of Garnishment – Judgment Debtor Other Than Natural Person

CRCP 103 §4; 403 §4

- Used to seize monetary assets being held on behalf of the debtor company by a fiduciary (*bank*)
 - No 25% limit for debtor other than natural person
 - Service of the Writ of Garnishment entitles the creditor to the assets held by the fiduciary at the date and time the Writ is served
 - **Tip:** Serve the Writ when there is money to be had
 - Writ is ineffective as to monies leaving before service, or entering after service
 - Once the Writ is served on the fiduciary, Notice of Levy must be served on debtor, including a list of possible exemptions, which the debtor may claim w/in 10 days of service by written claim to the court.
- CRCP 103; 403 §6(c)
- Hearing on the merits w/in 10 days of claim
 - Burden of proof on debtor
 - **Tip:** check with local Clerk for conventions in naming businesses

Collecting on a Judgment

Writ of Garnishment for Support

CRCP 103 §3, 403 §3

- not limited to ninety days, but until child support judgment is satisfied
- Other creditors must settle for scraps after child support is satisfied
- “earnings” defined differently that for continuing garnishment
CRS 13-54-104(b)2)

Writ of Garnishment in Aid of Writ of Attachment

CRCP 103 §5; 403 §5 Writ of Attachment: CRCP 102 & CRS 13-55-102

- Writ: Form 33
- Notice of Levy: Form 34

Writ of Attachment CRCP 102

- Must have an Affidavit as to the debt and certain conditions **CRCP 102(c)** [jurisdictional issue](#)
- Bond required by the Court
- Court issues the Writ and Notice
- Personal Service on the debtor
- Sheriff attaches property
(but not Sunday or holiday unless Court directs it)
- Debtor may traverse; seek Hearing
- Sheriff returns Writ in 20 days with Certificate of Proceedings
- Final judgment – >30 days after Writ issued
- P who fails to prevail at trial is liable to D for fees and costs

Writ of Assistance

- When the assistance of some outside entity is needed, like a locksmith
(but not Sunday or holiday unless Court directs it)

Seizure of Real Property

Two categories:

- non-homestead property
- and homestead property
(a debtor's residence)
Make sure you know the liens and mortgages and all the priorities

Non-homestead property:

- 1) Judgment Lien
- 2) Writ of Execution to Sheriff
- 3) Certificate of Levy filed by the Sheriff w/County Recorder
- 4) Notice of Levy
- 5) Mailing list w/addressed stamped envelopes for Notice of Redemption Rights
- 6) Partially completed Notice of Sheriff's Sale
- 7) Certificate of Purchase
- 8) Sheriff's Deed to be completed if no redemption takes place

Homestead Property CRS 38-41-206

1. Creditors Affidavit describing the homestead property
2. Statement of Fair Market Value
3. FMV exceeds homestead exemption
4. Statement of no previous execution fm same judgment
5. Affidavit of Appraiser
property must sell for >70% FMV

Plus all requirements above for non-homestead property

Seizure of Personal Property

- Writ of Execution to the Sheriff
- Sheriff's Indemnity Bond
- Notice of Levy
- Inventory of Items to be Seized
- Writ of Assistance
- Letter of instruction
- Sufficient manpower & transport for property to be seized

Till Tap

- Seizure of the contents of the cash in a business's cash registers
- Writ of Execution to the Sheriff
 - Sheriff's Indemnity Bond
 - Notice of Levy
 - Letter of instruction

Garnishee's Failure to Answer

CRCP 103 § 8

Where garnishee fails to answer, judgment may be sought against the garnishee

Set Off Provisions

CRCP 103 § 10

Any indebtedness of the debtor to the garnishee may be offset, even if those debts are not in arrears.

Judgment-Debtor Exemptions

CRS 13-54-102:

Wearing Apparel	\$500
Watches, Jewelry	\$1000
Books, Pictures	\$1500
Burial Sites	No Limit
Household goods	\$3000
Food and Fuel	\$600
Farm Equip/Livestock	\$25,000
Business Equip	\$10,000
Auto	\$3,000
Cash Value of Life Ins.	\$50,000
Retirement accounts	No Limit
Homestead	\$60,000
	(\$90K if >60 yrs or disabled)

CRS 38-41-201