

## Methods of Enforcing a Judgment

Article

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Congratulations! You were just awarded a six-figure judgment after suing for breach of contract. Now it's time to collect on that judgment. Unfortunately, sometimes collecting on a judgment can be as challenging as the trial. This article will explore the processes available to you so that you can take the steps necessary to recover the money that is owed to you.

A money judgment means that a judge or jury has decided that one party owes another money. Equally important, creditors must take the next step to convert the judgment into actual payment. To that effect, this article discusses how Florida creditors engage in post-judgment collection efforts.

### **Execution and Levy**

Even after obtaining a judgment, a debtor may still refuse to pay. At that point, a creditor may request a "writ of execution" from the court, empowering the sheriff to seize property to satisfy the money judgment. Seizable property includes the debtor's personal property such as cars, boats, and jewelry, or even real property. Note that the debtor's election of the homestead exemption shields the debtor's primary residence from seizure and provides a vehicle exemption as well as a personal property exemption worth up to \$1,000 each.

Importantly, a judgment lien follows the debtor's personal property, making its sale prohibitive to potential purchasers. As such, a creditor filing a judgment lien certificate with the Department of State creates a statewide lien on the debtor's personal property. A creditor must file a lien quickly since courts establish priority based on who files first.

### **The Judgment Lien Improvement Act**

In a more challenging collection case, a creditor may institute proceedings supplementary to execution, acquiring rights to a debtor's claim against another party. In other words, the Act now allows a lien to attach onto certain accounts or payment intangibles like the debtor's payment rights

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for services rendered, goods sold, royalties, rents, or settlements. An attorney can file a complaint/petition on a creditor's behalf against the would-be payor, prohibiting anticipated payments to the debtor in favor of collection efforts. The Act is retroactive, providing that all judgment lien certificates effective as of September 30, 2023 are perfected as of October 1, 2023 with respect to payment intangibles and accounts.

### **Garnishment**

A creditor may also enforce a money judgment by writ of garnishment. In garnishments, the creditor proceeds against another party, the "garnishee," to collect the *debtor's* debt or property to satisfy the judgment. If the debtor fails to negotiate a voluntary payment, the most obvious target garnishee is the debtor's wages/salary or bank accounts.

However, consider some caveats which make Florida a more debtor-friendly state. Absent contrary evidence, Florida law presumes that a joint marital bank account is an exempt "tenancy by entireties account," preventing collection. Other assets excluded or otherwise not subject to garnishment include the modest earnings of a "head of the family," who provides more than half of the support for a dependent; real property; or proceeds of a homestead sale. Generally, Florida makes collection more difficult against a debtor who has others reliant on their income. Likewise, the creditor may not recover post-judgment attorneys' fees absent a contract provision or a statute.

### **Challenges in Collection**

Unsurprisingly, debtors hide assets, making efficient and precise collection difficult. While public records may assist, an attorney may obtain information on the debtor's finances through court enforced discovery—even on non-debtor parties. The debtor's refusal to comply with discovery subjects them to contempt of court, adding additional penalties to encourage payment.