

# Magistrates Court (Civil Jurisdiction) Rules 2004—Form 90

(see s 353)

## Important notice to judgment debtor

To the Judgment Debtor:

A writ of execution has been issued against your personal property.

In executing the writ, the bailiff is entitled to include any costs and charges incurred in the execution of the writ, including charges for items such as advertising the sale of your property and removal and storage costs.

Your property is not to be sold within 6 days of the date when it was seized unless the property is of a perishable nature or you make a written request for the property to be sold sooner.

### **The amount payable**

The amount payable to discharge this writ is \$.....plus \$ ..... per day for interest for each day after ..... (insert date of application for writ of execution). If this amount is not paid on or before ..... further expense may be incurred in arranging for the sale of the property.

### **You will receive from the bailiff a list:**

- (i) identifying the personal property seized: and
- (ii) the determined market value of the property seized:

A reserve price equal to 65% of the determined market value will apply to the property to be sold.

**Challenging the determined market value**

You may within 5 days of receiving the notice from the bailiff advising you of the determined market value (or any subsequent notice advising you of a determined market value) **challenge the determined market value by attending at the Office of the Registrar of the Magistrates Court at ..... Canberra and make an application to the Registrar for a determination of a higher market value for the property.**

The Registrar cannot determine a higher market value for the property unless:

- (i) there is evidence from a suitably qualified and experienced person about the true market value of the goods: and
- (ii) the Registrar is satisfied having regard to that evidence that the determined market value is substantially less than the true market value.

Your property will not be sold until the application has been decided by the Registrar.

**The date of sale**

The property detailed above will be sold at public auction at ..... on .....at .....

**Conditions of sale**

The bailiff shall sell the property:

- (i) in the order that in his or her opinion, is best for the speedy execution of the writ without undue expense; and
- (ii) subject to these considerations in the order you may specify; and
- (iii) subject to paragraphs (i) and (ii), in the order that, in the bailiff's opinion, is best for minimising hardship to the judgment debtor or any other person.

Property will not be sold for less than the reserve price.

If a bailiff is of the opinion that the property seized under the writ of execution is more than sufficient to pay the amounts due, the bailiff will sell so much of the property as is in his/her opinion sufficient to satisfy the amounts due under the judgment.

If the property sold is not sufficient, the bailiff will sell so much more of the property as in his or her opinion would be sufficient to satisfy the amounts due under the judgment.

**Application for an instalment order**

You may attend at the Office of the Registrar of the Magistrates Court and inquire about whether you may make application to repay the amount due by instalments which, if granted, would prevent the sale of your property.

**Application to exempt specified property from sale**

You may attend at the Office of the Registrar of the Magistrates Court and make an application to the Registrar for a declaration that specified property be exempted from sale on the basis that you or a member of your family would be likely to suffer exceptional hardship.

**Payment preventing execution**

The bailiff cannot proceed with the sale of your property if you have:

- (i) paid to the bailiff the amount due under the judgment (or produced to the bailiff the receipt of the Registrar for that amount); and
- (ii) paid the amount of all the proper costs and charges actually incurred up to the date of payment, including any costs associated with removing the property from the place where it was seized and advertising the sale.

Inquiries

Inquiries of the judgment creditor should be directed to ..... on telephone .....

Dated:

Bailiff:.....

Contact telephone number .....

## Endnotes

- 1 This form was approved by the Attorney-General on 31 March 1995 by determination No 27 of 1995 under the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 471.
- 2 Under the *Court Procedures Act 2004* A2004-59, pt 8, this form became a form approved under that Act.
- 3 This republication includes amendments made under the Legislation Act, part 11.3 (Editorial changes).

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