



Seizure

» Imagine that you owe money to an impatient creditor and are having difficulty paying off your debt. You try to reach an agreement, but nothing comes of it. Your creditor goes to court and obtains a judgment ordering you to pay what you owe. If you are still unable to pay off your debt, your creditor decides to seize your property.



Before taking this step, it is in your creditor's interest to find out about your financial situation, namely whether you have any income or goods worth seizing. This means that you may receive a summons from your creditor to answer questions about your finances. It would be a serious mistake not to show up, since you could incur severe penalties.

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» Types of seizure

In other words, your creditor will know whether to carry out a seizure by garnishment, a seizure of movable property, or a seizure of immovable property. All three can be executed simultaneously. In any event, before going any further, your creditor must ask for a writ of seizure from the court clerk, indicating the date of the judgment and the amount of the award.

Seizure by garnishment

After finding out that you will be receiving a salary payment or that you have an account at a bank or credit union, or that you are scheduled to receive goods, securities or money from another person, your creditor can execute a seizure by garnishment and seize goods that belong to you from that other person.

The most common example of seizure is the garnishment of wages from an employer. If this happens to you, it is important to note that not all your wages can be seized. For instance, if you have one or two dependents to support, such as your spouse, children or a relative, \$180 per week of your salary is immune from seizure. This amount increases by \$30 for each additional dependent. If you live alone, \$120 per week is exempt from seizure.

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The following table shows the exemptions you are entitled to claim, according to the number of your dependents and the frequency at which your wages are paid. Your “spouse” is the person to whom you are married, or the person with whom you have been living in a same-sex or opposite-sex union for three (3) years, or one (1) year if you have had a child together.

Calculating exemptions (\$)

Number of dependents	If you are paid weekly	If you are paid every two weeks	If you are paid twice a month	If you are paid monthly
None	120.00	240.00	260.00	519.99
1	180.00	360.00	390.00	780.00
2	180.00	360.00	390.00	780.00
3	210.00	420.00	455.00	909.99
4	240.00	480.00	519.99	1040.00
5	270.00	540.00	585.00	1170.00
6	300.00	600.00	650.00	1299.99
7	330.00	660.00	714.99	1429.99
8	360.00	720.00	780.00	1560.00
9	390.00	780.00	845.00	1689.99
10	420.00	840.00	909.99	1819.98
11	450.00	900.00	975.00	1950.00
12	480.00	960.00	1040.00	2079.99

Once the unseizable part of your wages has been determined, your employer will be required to withhold up to 30% of the remainder. However, when the debt concerned results from a partition of family patrimony, a failure to pay child support, or the payment of a compensatory allowance, the amount withheld may be up to 50% of your gross wages, before deductions.

Finally, it is important to be aware that certain pensions from retirement funds or pension funds cannot be seized, except for debts resulting from unpaid support payments.

Seizure of movable property

After discovering that you own movable property of sufficient value to repay your debt, your creditor can request a writ of seizure. The bailiff in charge of carrying out the seizure can demand entry to your residence between 7:00 a.m. and 8:00 p.m., Monday to Saturday inclusively, provided it is not [a statutory holiday](#)¹. The court may, however, authorize execution of the seizure outside these times.

Usually, the bailiff must read you the writ of seizure and request payment of the debt. If you can pay then and there, the seizure ends. If not, the bailiff executes the seizure by drawing up a list of the goods found on the premises.

However, certain items are excluded: the furnishings of your main residence that are essential to your household, up to a market value of \$6,0000, food, fuel, linens and clothing for your family, and the tools you need to carry on your professional activity. In other words, you will not lose the items you use on a daily basis.

Once the list of goods seized has been drawn up, the bailiff places these goods in your

custody, which you cannot refuse. A creditor who has good reason to believe that you will not keep the items until they are sold by court order may ask the court to have them removed from your residence.

The bailiff will then give you a copy of the minutes of seizure indicating where and when your goods will be sold. The sale can be avoided if you pay off your debt and the costs of the seizure before the appointed date.

If you cannot do so, the sale must be held at least ten (10) days after publication of a notice to that effect. On the date set, the sale is held at the appointed place, generally the premises of the seizure, between 10:00 a.m. and 5:00 p.m. Your goods are sold at auction to the highest bidder.

The officer in charge of the sale then writes an account indicating the items put up for sale, the amounts obtained and the names of the buyers.

If nobody else claims a share of the proceeds of the sale within the time allotted, the bailiff pays your creditor after deducting costs, including the costs of the seizure and sale.

Whether the goods seized belong to a company or an individual, the copy of the report prepared by the bailiff indicates the place and time of the sale. There is a special procedure in the event that one or all of the items have a market value of \$6,000 or more.

In the event that the goods seized belong to a company and are worth \$6,000 or more, the officer responsible for the seizure must obtain a certified statement of the rights registered in the register of personal and movable real rights for those goods.

The officer must also do this in the event that the goods seized from an individual include a vehicle or another item that could be covered by a hypothec, or for a group of such items with an estimated value of \$1,000 or more.

Seizure of immovable property

It is important to note that if you own a building that serves as your main residence and the court orders you to pay a debt of \$10,000 or more, the creditor may seize the building and have it sold by way of a judicial sale in order to satisfy the claim. If the debt concerns support payments, the \$10,000 limit does not apply.

The bailiff will contact you, request payment of the debt, and hand you the writ of seizure issued by the court, together with the minutes of seizure drawn up by the sheriff.

These same documents will be sent to the registrar at the registry office for the territory where your building is located. The registrar will note the seizure in the land register and send written notices to anyone with a claim on the building (such as the holder of a hypothec). As with a seizure of movable property, you are given custody of the seized property, in other words your building, which you cannot sell, give away or damage.

The sale of your building must take place at least thirty (30) days after the sheriff publishes a notice of sale in a newspaper. On the appointed day, the sale is held in a public place determined by the sheriff. The officer in charge of the sale must indicate the conditions of sale before the sale begins.

The amount of the opening bid is determined by the sheriff and indicated in the notice of sale. This amount must be equivalent to at least 25% of the municipal assessment for your building. However, if the building is used as a family residence, this amount cannot be less than 50% of the municipal assessment, unless determined by the court.

It should be noted that certain people cannot take part in the auction or acquire a building sold by order of the court:

- the person who owns the building;
- the administrators or trustee to whom the building has been entrusted;
- the sheriff;
- the officer conducting the sale; and
- a [false bidder²](#).

At the auction, your building will be sold to the highest bidder. This bidder must immediately pay a minimum amount equivalent to the opening bid and must pay the remainder of the purchase price within five (5) days, failing which interest will accrue.

Once the sale price has been established, the sheriff issues a certificate of sale indicating, among other things, the creditor's name, the purchaser's name, your name, the description of the building sold, the conditions of sale and the price paid. The sheriff gives the court clerk a report of the proceedings of the sale and deposits the money received, after deducting costs and fees.

The court clerk remits the proceeds of the sale to your creditors, up to the amount of the debt. Any excess is paid to you. However, if the proceeds of the sale are not enough to pay the seizing creditor, he or she can have any goods you subsequently acquire seized, for up to ten (10) years following the date of the judgment authorizing the seizure. Please note that this ten (10) year period is added to the time required to execute the judgment. Other creditors may do the same.



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» Opposing a seizure

There are three ways to oppose a seizure, in order to have it annulled, to withdraw specific goods from the sale, or to retain a claim.

A seizure may be opposed on the following grounds:

- there is an irregularity in the seizure which is causing you serious harm;
- the goods seized are exempt from seizure;
- you have repaid your debt.

If some of the goods seized do not belong to you, their real owner can oppose the seizure in order to have them withdrawn from the seizure. For example, the bailiff may have seized an automobile in the belief it belongs to you, when in fact it is leased. The owner of the vehicle can oppose the seizure to have the vehicle removed from the seizure.

Creditors other than the seizing creditor may not oppose the seizure or sale of your goods. However, if they have a prior or hypothecary claim, they may protect their rights to payment by submitting a statement, which will allow them to receive part of the money derived from the sale of your goods. This would be the case, for example, for an electronics store which, having sold you a stereo system to be paid off in instalments, learns that it was sold following a seizure. The store can file a statement of its claim within ten (10) days following the sale and receive part of the proceeds of the sale.

When one or more claimants oppose a seizure of movable or immovable property or a seizure by garnishment, the seizure is suspended from that time. However, in the case of the seizure of wages, only the payment of the amounts seized is suspended. On the other hand, when a seizure is made under a judgment awarding support payments, the opposition does not suspend the payment of the amounts seized unless it is ordered by a judge. Last, the judge decides if the oppositions are well-founded, regardless of the type of seizure.

» Seizure before judgment

In general, as noted above, your creditor must have obtained a court judgment ordering you to pay the amount owed, before seizing your property. In certain cases, however, the creditor can legally have your goods seized before a judgment is rendered.

With court authorization

Let's take the following example: you are sued for a debt of \$10,000 and, while the suit is being heard, you decide to sell all your goods to avoid having them seized.

If your creditor finds out about your intentions, he or she can ask the judge to authorize seizure of your goods before the judgment, after convincing the judge that seizure is essential because the debt is in jeopardy. The creditor then submits an application for a writ of seizure, attaching a sworn statement that the debt well and truly exists and that you have taken steps to sell your goods before the suit is decided.

If the judge authorizes seizure before judgment, the bailiff places the seized goods in the custody of another person, unless the seizing creditor allows them to be left in your custody. You are then forbidden to sell them, give them away or damage them. If the judge refuses to authorize seizure before judgment, the trial continues.

Without court authorization

Seizure before judgment without the authorization of the court is only allowed in certain special situations. The most common example is when a friend lends you an item which you refuse to return. Your friend, as owner of the item, has certain rights and can seize the item before judgment without authorization.

In this case, the bailiff gives you a writ of seizure, generally with a declaration stating the reasons for the request and the settlement sought, and proceeds to execute the seizure. You may then contest the seizure and the declaration. The court will make a decision based on the evidence submitted to it.

If some of your own goods are removed from your home during the seizure, you can repossess them by providing satisfactory security. The purpose of a seizure before judgment, whether authorized by the court or not, is not to have your goods sold but to place them under the court's protection until the suit is over. The effect is purely preventive.

1. Statutory holidays include: Sundays, January 1 and 2, Good Friday, Easter Monday, June 24, July 1 (July 2 in the event July 1 falls on a Sunday), December 25 and 26, the date set for celebrating the Queen's birthday, and any other day declared by government order as a public holiday or Thanksgiving (first Monday in September and second Monday in October). Saturday is only considered a statutory holiday for the purpose of calculating deadlines. See [Court calendar](#).

2. A false bidder is a person who, after having offered a certain amount for a building, does not pay it. In this event, your seizing creditor, you or another of your creditors can ask that the building be resold.

The false bidder must then pay the additional costs incurred as a result of non-payment. Moreover, if the proceeds from the second sale are less than from the first sale, the false bidder must pay the difference.

» For more information


How to protect yourself against a seizure:

- [Voluntary deposit](#)

Items of property and income not attachable:

- [Items of property and income protected against seizure or garnishment](#) 
(*In French*)

Laws relating to seizures:

- [Code of Civil Procedure](#)  (arts. 543 to 732)

Forms that relate to seizure:

- [Writ of seizure by garnishment after judgment](#) (SJ-287A)
- [Garnishment](#) (Garnishment of wages) (SJ-255A)
- [Declaration by the garnishee](#) (SJ-864A)

The content of this document is strictly informative and has no legal value.

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