

## **ENFORCEMENT OF CIVIL JUDGMENTS**

*(Information Sheet for Parties in Magistrate Court Civil Cases)*

When a magistrate decides a civil case and there is an award of money or possession of property, the losing party may voluntarily comply with the terms of the judgment. If the losing party does not, the winning party may return to court to begin proceedings to enforce the judgment through the magistrate court clerk's office. The clerk needs to be informed by the person who wants to enforce the judgment just what course of action that person wants to take **and** needs to receive payment of costs and fees associated with that process before issuing the court documents to enforce the judgment.

A clerk is also required by law to wait at least 20 days before issuing any enforcement of judgment document. The reason for this is that a person has 20 days to appeal the magistrate's decision to circuit court or to file a motion to set aside the judgment in magistrate court. If an appeal or motion is filed, the judgment is put on hold (stayed) until the appeal or motion is decided by the court. Once that time period has expired, the clerk may issue various court documents to enforce that judgment. The methods by which a person may choose to enforce a judgment in magistrate court include:

- **Writ of possession:** When the magistrate's award includes possession of real estate or possession of specific personal property, this order is used to direct the sheriff to seize the property and deliver possession of it to the party who is legally entitled to it [§ 38-4-4].
- **Judgment lien:** This is a claim against the real estate of a person which is filed with the clerk of the county commission. The document which is filed to create the claim is called an abstract of judgment and is issued by the magistrate court clerk. If the owner of the real estate wants to sell the property, the buyer would want the lien to be satisfied before the sale occurs. The person awarded judgment who places the lien on the real estate also may file suit in **circuit court** to obtain an order to force the sale of the real estate at auction to satisfy the judgment.
- **Writ of execution:** In practice, this writ is used to enforce a judgment for money by directing the sheriff to seize and sell the non-exempt<sup>1</sup> personal property of the person against whom the judgment was made in an amount which will satisfy the judgment [ §§ 34-4-5 thru 22].
- **Suggestee execution:** This is an order issued by the magistrate clerk directing the employer of the person who has not satisfied an outstanding judgment to withhold a portion of the debtor's wages to satisfy the judgment [ §§ 38-5A-1 thru 13, private employees and federal government employees; §§ 38-5B-1 thru 16, state and local government employees].
- **Suggestion:** When a person awarded money by a court believes a third party, such as a bank, owes money to or holds property belonging to the person against whom the judgment was made, the person awarded the judgment may request a suggestion be issued to satisfy the judgment [§ 38-5-10 thru 23].

If a person is not sure which alternative is the best or what action should be taken in response to issues that arise while enforcement proceedings progress, he or she should contact an attorney for legal advice. Clerks and magistrates are prohibited by law to give legal advice.

**Enforcement of a West Virginia judgment in another state.** A person awarded a judgment in West Virginia may enforce that judgment against the person owing the judgment even if the debtor works or owns property in another state. The process to be followed depends on the laws of the state where enforcement of the judgment is sought.

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<sup>1</sup> Note: A portion or all of the real or personal property of a person against whom a judgment exists may be protected from collection (exempt from execution) under the West Virginia Constitution (homestead exemption) and statutes (personal property exemptions).