



**DEBT COLLECTION  
LEGAL PROCEDURES AND ENFORCEMENT OPTIONS**

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# TABLE OF CONTENTS

<b>J.W. O'DONOVAN – AN OVERVIEW</b>	<b>3</b>
<b>J.W. O'DONOVAN AND DEBT RECOVERY</b>	<b>3</b>
<b>LEGAL PROCEEDINGS</b>	<b>4</b>
- District Court	4
- Circuit Court	4
- High Court	5
- Interest and Costs	5
<b>ENFORCEMENT RECOVERY OPTIONS</b>	<b>6</b>
- Registration and Publication of Judgment	6
- The Sheriff	6
- Garnishee	6
- Instalment Order	6
- Committal Order	6
- Judgment Mortgage	6
- Winding up Companies	6
- Bankruptcy	6
<b>APPENDIX – GLOSSARY OF LEGAL TERMS</b>	<b>7-8</b>

*This publication is intended to provide a brief outline of some of the processes relating to Irish Judgment procedures and Enforcement options. Please note, however, that it does not constitute legal or commercial advice, nor is it intended to provide a comprehensive or detailed statement of the law.*

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## J.W. O'DONOVANS AN OVERVIEW

Since our establishment in 1931, JW O'Donovan has built and maintained strong ties throughout Ireland and abroad. The firm combines experience, in-depth knowledge and quality to provide legal advice on a wide range of practice areas to a variety of institutional, commercial and private clients. We have grown and adapted in direct response to our clients' changing needs.

Based in Cork, the firm operates throughout the country offering specific expertise in corporate finance and commercial law, taxation, property, planning, environmental law, litigation and dispute resolution as well as employment law and private client work.

We are committed to responding to the needs of our clients, whether private or corporate, by combining our established values with specialist expertise, supported by legal research and information technology. We appreciate the importance of acting promptly in business and achieve this by applying a multi-disciplinary approach to each engagement which avails of the knowledge of all sections of our practice.

## J.W. O'DONOVANS AND DEBT COLLECTION

For any business, the timely collection of debts is of critical importance and a steady flow of payments from debtors is a key element in running a successful business.

At JW O` Donovan, we have an excellent debt recovery team and provide a comprehensive, efficient and cost effective service.

Our service includes all aspects of debt collection from drafting and issuing of warning letters, to the institution and service of proceedings and the enforcement of judgements. We constantly review our practices to ensure that we employ the most innovative and up-to-date mechanisms for the recovery of your debt. Furthermore, our extensive experience in commercial and company law proves invaluable in enhancing the quality of our services to our clients.

## LEGAL PROCEEDINGS

Debt recovery generally takes place in three stages. The first step is where the slow payer turns into a bad debtor, in the second the Creditor obtains a court judgment and in the third the Creditor enforces the judgment.

The legal process in Ireland for obtaining a judgment and enforcing same is summarised in brief below. The level of the debt and whether the debt is being disputed or not dictates the court and manner in which proceedings shall be run.

The enforcement of judgments and the options available to the Creditor depend largely on the type of debtor against whom judgment has been obtained.

DISTRICT COURT DEBTS UP TO €6,348	
UNCONTESTED	CONTESTED
<ol style="list-style-type: none"> <li><b>1. Civil Summons sent to Debtor</b> - official notice from the Creditor of the nature of the claim - to which the Debtor does not respond.</li> <li><b>2. Affidavit of Debt sworn by Creditor</b> - no court hearing takes place so Creditor swears the amount of the debt now due.</li> <li><b>3. Affidavit, Decree &amp; Memorandum</b> are filed in Court office</li> <li><b>4. Judgment</b> should issue to Creditor within 20-60 days.</li> </ol>	<ol style="list-style-type: none"> <li><b>1. Civil Summons sent to Debtor</b> - to which he/she does respond (see No.2 below)</li> <li><b>2. Notice of Intention to Defend</b> submitted by Debtor and date of court hearing fixed</li> <li><b>3.</b> Creditor and Debtor put their cases to the judge and, if successful, the Creditor will receive a <b>Judgment</b> within 10-30 days after the hearing.</li> </ol>

CIRCUIT COURT—Debts between €6,348 & €38,092	
UNCONTESTED	CONTESTED
<ol style="list-style-type: none"> <li><b>1.</b> Similar to the District Court process i.e. if uncontested, no court hearing takes place and a <b>Judgment</b> issues on receipt of Affidavit of Debt in the Court office, sworn by the Creditor.</li> </ol>	<ol style="list-style-type: none"> <li><b>1. Civil Bill</b> issued to Debtor - to which he/she does respond (see No.2 below)</li> <li><b>2. Appearance</b> submitted by Debtor - his/her acknowledgment of intention to contest, and his/her written "Defence" should be registered in the Court office Court often allows delay to allow either the Creditor, or Debtor, prepare their case.</li> <li><b>3. Notice of Trial</b> is served by Creditor, after receipt of Debtor's Defence, advising date of court which can be 2 – 5 months away, depending on court scheduling.</li> <li><b>4. Court hearing</b> with both Creditor and Debtor making their cases to the judge and <b>Judgment</b> will issue, if Creditor is successful.</li> </ol>

# LEGAL PROCEEDINGS

## HIGH COURT DEBTS ABOVE €38,092

### UNCONTESTED

1. **Summary Summons** is served - by personal service to a person (s) or by ordinary post to the registered office address of a limited company.

While such cases are usually contested, if uncontested, no court hearing takes place and a **Judgment**, or **Fifa**, issues in the same way as from the lesser courts.

### CONTESTED

1. Such cases are heard by way of a **Motion** before the **Master of the High Court** in Dublin. Both Creditor, and Debtor would make their cases by Affidavit and the Master will rule in favour of either, or

(i) can refer it onwards to be heard by a High court judge, or

(ii) refer it for Plenary Hearing with oral evidence, or

(iii) allow part of the claim and refer the remainder of the claim onwards.

## INTEREST

Interest can be claimed at the contract rate in any proceedings. However, where there is no contractual provision, the Court may award interest at its discretion.

Also, for contracts entered into after the 8th of August 2002, EU regulations now allow for interest to be charged on all late payments (after 30 days have lapsed) at a rate of interest linked to the ECB base rate, currently 10.25% p.a.

After Judgment is awarded, interest is automatically applied to the Judgment debt at a statutory rate, currently 8%.

## COSTS

Costs awarded to Creditors vary depending on the amount due and the Court. They are generally low, unless the case is a defended.

## RESULT: ENFORCEMENT AND RECOVERY OPTIONS

### REGISTRATION OF JUDGMENT

The publication and registration of a Judgment can have serious implications for a person in terms of seeking finance from banks etc. Judgments, once registered, are published in the Experian All Ireland Gazette, and Stubbs Gazette. Often the threat of registration and publication is sufficient to secure payment.

### THE SHERRIFF

Once judgment is obtained an execution order against the debtor may be forwarded to the relevant Sherriff. The Sherriff is entitled to seize goods of the debtor in satisfaction of the debt. The Sheriff will not seize tools of trade, or essential household items and ultimately the debtor may have no goods to seize.

### GARNISHEE ORDER

A creditor who knows that a debtor is due monies from another third party, can apply to court for a garnishee order directing that such monies be paid by the third parties directly to the creditor.

### INSTALMENT ORDER PROCESS

Where a judgment is obtained a creditor may apply to the court to have the individual summonsed to the court in order to assess his means. The Judge may then decide what level of weekly/monthly debt repayments the debtor can make (if any) and grant an instalment order directing the debtor to make periodical repayments to you.

### COMMITTAL ORDER

Where a debtor defaults on an instalment order the creditor may make an application to the court for a committal order against the debtor. This permits the Gardai to arrest the debtor and to bring him before the court to explain his default on the instalment order.

### JUDGMENT MORTGAGE

Once judgment has been obtained the creditor can apply in court to have a judgment mortgage registered on the debtor's property. This prevents any dealings with that property unless the relevant debt is discharged.

### WINDING UP OF COMPANIES

Where a creditor is owed money by a company it may bring a petition to the court seeking to have the company wound up. A creditor can also file a complaint with the Office of Director of Corporate Enforcement that the company was trading whilst insolvent. The threat of such an action is often sufficient to secure payment of the debt.

### BANKRUPTCY

When a creditor fails to repay a debt one of the legal options open to a creditor is to petition the court to declare the debtor bankrupt where the debtor is an individual rather than a company. This process has become popular in recent times and a judgment is not required before bankruptcy proceedings can be instituted.

#### Contact Us:

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## GLOSSARY OF TERMS

**Affidavit of Debt** Document sworn by the client in order to obtain Judgment setting out the facts of the case and confirming the balance due

**Appearance** In the Circuit or High Court, an indication from the debtor that he intends to defend the case Appointment of Receiver/Liquidator See Receiver or Liquidator

**Bankruptcy** The procedure by which the debtor's assets are realised and, after payment of preferential and secured creditors, the balance (if any) is distributed, in proportion, to unsecured creditors

**Circuit Court** The court which deals with claims for amounts between €6,348 and €38,092

**Civil Bill** Document initiating legal proceedings in the Circuit Court

**Civil Summons** Document initiating legal proceedings in the District Court

**Committal Order** A District Court Order directing that the debtor be committed to prison for breaching the terms of the Instalment Order (i.e. for non-payment of instalments)

**Committal Warrant** Document issued by the District Court to the Gardai directing that the debtor be imprisoned on foot of the Committal Order

**County Registrar** An officer of the Circuit Court who grants Judgments and acts as County Sheriff

**Court Interest** Interest chargeable on debts where Judgment has been granted, currently at 8%

**Creditors Meeting** Meeting called to examine the position of a Debtor Company in relation to their debts and which usually results in the appointment of a Liquidator

**Defence** Document lodged in court by the debtor which offers a rebuttal of the Plaintiff's claim that the debt is due and owing

**Defendant** The party against whom legal action is brought; the debtor by whom the money is owed

**District Court** The court which deals with claims for amounts up to €6,348

**Enforcement** Procedures taken after Judgment for recovery of the debt

**Examination of Company Directors** Application is made to the Master of the High Court to order a director of a company to appear before it and give evidence relating to his running of the company

**Foreign Judgments** A Judgment obtained in another EU state which the creditor wishes to enforce in Ireland.

**Garnishee Order** A Court Order directing a specified third party who owes money to the debtor to pay the creditor instead

**High Court** The court which deals with claims for amounts over €38,092

**Instalment Order** An Order of the District Court directing the debtor to make payment of the debt by regular instalments

**Judgment** An Order of the District, Circuit or High Court confirming that the debt is due and directing that payment be made

## GLOSSARY OF TERMS

**Judgment Mortgage** Judgment is registered as a Mortgage against the Debtor's property

**Judgment Mortgage Affidavit** Document sworn by the client when applying for a Judgment Mortgage

**Jurisdiction** The court, depending on the value of the debt, in which legal action is taken; District, Circuit or High Court

**Limited Company** An incorporated entity which can sue or be sued in its own name

**Liquidator** An Accountant appointed to manage and oversee the winding up of a company and the disposal of its assets

**Motion** An application on Affidavit to the Circuit or High Court for a Court Order

**Notice for Particulars** Document furnished by the debtor seeking further details of the plaintiff's claim

**Notice of Intention to Defend** In the District Court, an indication from the debtor that he intends to defend the case

**Order for Sale** A Court Order, obtained on foot of a Judgement Mortgage, directing that the debtor's property be sold to discharge the debt

**Plaintiff** The party bringing legal action; the creditor to whom the debt is owed

**Property Search** Procedure whereby a firm of Law Searchers will make enquiries in the Land Registry and Registry of Deeds to determine whether the debtor is the owner of property

**Receiver** An Accountant appointed to manage the affairs of a company or, in exceptional circumstances, an individual

**Receiver by way of Equitable Execution** A Court Order directing that specified monies which may fall due to the debtor in due course be paid to the creditor instead (e.g. the proceeds of a court action)

**Registration of Judgment** Procedure which leads to the publication of the Judgement in the Experian Gazette and Stubbs Gazette

**Reply to Notice for Particulars** Document furnished by the plaintiff providing the details sought in the Notice for Particulars

**Scale Fees** Sliding Scale of Court Costs recoverable from the Debtor in legal proceedings

**Sheriff** Court Officer empowered to seize goods owned by the debtor to satisfy the debt Statute of Limitations Period within which legal action can be taken for recovery - normally six years for debt

**Substituted Service** Where court documents cannot be served on the debtor by registered post, an application is made to the Court for an Order directing that they be served by ordinary post, or personally

**Summary Proceedings** Proceedings taken with a view to obtaining Judgment through the Court Office, where a debt only is due and there is no issue of damages or property to be recovered

**Summary Summons** Document initiating legal proceedings in the High Court

**Summons for Attendance of Debtor** Summons issued on behalf of the Creditor directing that the Debtor attend his local District Court for the making of an Instalment Order