

怎樣執行判決

How to enforce a judgment

法庭服務簡介

Guide to Court Services

8

小額錢債審裁處
Small Claims Tribunal



怎樣執行判決

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1. 怎樣執行判決

- 1.1 如果審裁官判某一方勝訴，但是敗訴一方卻沒有遵照判決付款，則勝訴的一方可以向司法機構的執達主任辦事處申請《扣押債務人財產令狀》（簡稱“封票”），以強制執行判決。
- 1.2 必須謹記，即使申請人已經申請執行判決，也不能保證一定可以成功執行判決。再者，申請人須在作出申請時預先繳付按金和執行判決的費用。因此，申請人應該先仔細考慮本身的情況，才決定是否申請封票。

2. 申請手續

- 2.1 勝訴的一方向執達主任辦事處申請執行封票之前，可以按照以下步驟，到本審裁處的登記處申請發出封票：
 - (a) 從登記處、資訊中心或司法機構網站獲取一份申請表（稱“便箋”）和一份封票表格；
 - (b) 填寫判定債務人的資料和勝訴的一方想追討的款額；
 - (c) 於小額錢債審裁處會計部繳付提交費；及
 - (d) 到本審裁處的登記處領取經由法庭簽署的封票。

- 2.2 之後，勝訴的一方須於繳付按金以支付執達主任所需開支後，將封票交付執達主任辦事處執行。執達主任會按照指示扣押判定債務人（即敗訴的一方）的貨物和財物，而被扣押的物品的價值應該相等於判決款項加上執行判決的附帶費用。如果判定債務人沒有把判決款項繳存到法庭，執達主任便會把被扣押的物品公開拍賣，然後在所得的收入中扣除必要的法庭收費後，把餘款給予勝訴的一方。

- 2.3 勝訴的一方應該盡可能陪同執達主任執行封票，而且事前須要與執達主任預約時間。

3. 執执行程序

- 3.1 在執行封票當日，一名執達主任會帶同看守員前往判定債務人的處所。如果處所內有足夠的貨物和財物可供扣押，執達主任便會按照封票上所註明的款額和預計的執行費用，扣押價值相等的物品。執達主任會把扣押物品列成清單，然後把副本交給負責看守物品的看守員，以確保有關的物品不會被擅動或非法移走。
- 3.2 根據現行做法，判定債務人有5個工作天的寬限期清償債項。如果判定債務人在寬限期未能還款，執達主任便會公開拍賣被扣押的物品，在所得收入中扣除看守員的費用和附帶開支，然後以支票形式把餘款交給勝訴的一方。
- 3.3 如果執達主任在到了判定債務人的處所後發現並無足夠的物品可供扣押，他有權不進行抄封。勝訴的一方須在執行日起計14天內寫信到執達主任辦事處，提出進一步的指示。如果勝訴的一方陪同執達主任前往執行封票，則可以當場向執達主任給予指示。

3.4 注意事項：

- (1) 執達主任和看守員每次嘗試執行封票時都需要收費。
- (2) 如果執行封票的行動成功，費用會從拍賣所得的收入中扣除，而按金則會退還給勝訴的一方。
- (3) 如果執行封票的行動失敗，嘗試執行封票的費用便會從按金中扣除，餘款會退還給勝訴的一方。嘗試執行封票的次數愈多，費用也會愈高。
- (4) 如果勝訴的一方多次要求執達主任嘗試執行封票，便可能須要繳付更多的按金。
- (5) 嘗試強制執行判決可能涉及龐大的費用，勝訴的一方在事前應該先考慮清楚。如果勝訴的一方明知判定債務人沒有貨物或資產可供扣押，再追討下去也是徒然。
- (6) 在執行封票時，執達主任沒有權破門進入住宅處所內。因此，如果當執達主任嘗試執行封票時無人應門、或有關的處所的佔用人拒絕讓執達主任進入處所內、或執達主任難以確認處所內的貨物和財物是否屬於判定債務人，則執達主任便無法執行封票，而本審裁處在這方面也無法提供任何協助。在這情況下，勝訴的一方應該徵詢律師的意見，或考慮以其他方式強制執行判決。

4. 查詢關於執行的事宜

- 4.1 為了確保可以成功地執行封票，勝訴的一方必須向執達主任辦事處提供判定債務人的正確地址。如果勝訴的一方想知道執行封票的行動的進展，可以致電執達主任辦事處查詢（電話：2802 7510）。

司法機構

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How to enforce a judgment

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1. How can a judgment be enforced

- 1.1 After a winning party has obtained a judgment for payment of money from the Tribunal, he may apply to the Bailiff Office of the Judiciary for enforcement by way of a Writ of Fieri Facias (“FiFa”), if the judgment is not complied with.
- 1.2 It is very important to note that no one can guarantee that an attempt for enforcement will be successful and an applicant for enforcement has to pay a deposit and expenses in advance when an application is made. Therefore, an applicant should carefully consider his own position before submitting an application for a Writ of FiFa.

2. Application procedure

- 2.1 Before approaching the Bailiff Office for execution of the Writ of FiFa, the winning party may apply at the Tribunal Registry for a Writ of FiFa by following the steps below: -
- (a) obtain an application form (called “a praecipe”) and a Writ of FiFa form either from the Registry, the Information Centre or the Judiciary’s website;
 - (b) fill in the particulars of the judgment debtor and the amount of money the winning party wishes to recover;
 - (c) pay a filing fee at the Accounts Office of the Small Claims Tribunal; and
 - (d) collect the Writ of FiFa from the Tribunal Registry after it has been signed by the court.
- 2.2 After that, the winning party shall deliver the Writ of FiFa to a Bailiff Office for execution after paying a deposit covering the expenses incurred by the Bailiff. A Bailiff is directed to levy execution on the goods and chattels of the judgment debtor (i.e. the losing party) to a sum equal to the judgment plus the incidental expenses of execution. The Bailiff will seize and sell the judgment debtor’s goods by public auction if payment is not made into court. The proceeds will then be used to pay the money due to the winning party after defraying the necessary court charges.
- 2.3 The winning party is encouraged to accompany the Bailiff when he goes to execute the Writ of FiFa. The winning party has to make an appointment with the Bailiff in advance for this purpose.

3. The execution process

- 3.1 On the date of execution, a Bailiff, together with watchmen, will visit the premises of the judgment debtor. If there are sufficient goods and chattels to justify a seizure, the Bailiff will do so up to the amount endorsed on the writ, plus the estimated fees for execution. After making out an inventory of all the items seized, he will give one copy to the watchmen who are responsible for keeping watch over the items to ensure that they will not be tampered with or removed unlawfully.
- 3.2 The existing practice is for the judgment debtor to be given a grace period of 5 working days to settle the debt. If the judgment debtor does not pay within the grace period, the Bailiff will conduct a sale by public auction of the goods seized. The proceeds of the sale will be paid to the winning party by cheque after deducting watchmen's fees and incidental expenses.
- 3.3 If the Bailiff attends the premises of the judgment debtor and finds no or insufficient goods to justify a seizure, the Bailiff will not proceed with the execution. The winning party should write back to the Bailiff Office with further instructions within 14 days from the date of execution. If the winning party accompanies the Bailiff on the visit, he will be able to give instruction on the spot.

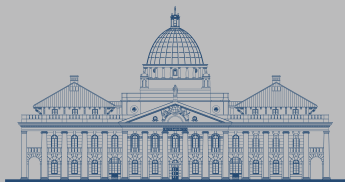
3.4 Points to note:

- (1) Costs are incurred each time the Bailiff and watchmen attempt to execute the writ.
- (2) If execution is successful, the costs will be defrayed from the proceeds of sale and the deposit returned to the winning party.
- (3) If execution is unsuccessful, the costs of the attempt or attempts will be deducted from the deposit and the balance returned to the winning party. The more attempts are made, the more costs will be incurred.
- (4) If the winning party asks the Bailiff to make several attempts, the winning party may have to pay a further deposit.
- (5) The costs of trying to enforce a judgment can be substantial. The winning party should think carefully before proceeding. If the winning party is aware that the judgment debtor has no goods or assets to be seized, there is little point in pursuing the matter.
- (6) In execution of the Writ of FiFa, the Bailiff has no power to break into domestic premises. Therefore, when attempting execution, if there is no one to answer the door or if the occupier refuses to let the Bailiff enter the premises in question or if there is difficulty in confirming whether the goods and chattels in the premises belong to the judgment debtor, the attempted execution would fail and there is nothing that this Tribunal could help in this regard. Under such circumstances, the winning party should seek legal advice and consider other alternatives to enforce the judgment.

4. Enquiries on execution matters

- 4.1 To ensure successful execution of the Writ of FiFa, it is essential that the winning party gives the Bailiff Office the correct address of the judgment debtor. If the winning party wants to find out what progress has been made in the execution of the Writ of FiFa, he can contact the Bailiff Office at 2802 7510.

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