

# The Mini guide to Debt Collection in Ireland

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This guide is intended to assist sole traders, small business owners and others as to how to collect debts owing to them.

It deals with the Small Claims Court and the procedures to follow to pursue a claim there. It also outlines the procedures in the other courts.

It is not intended to replace or substitute the engaging of the services of a suitably qualified professional, a solicitor, but should be of assistance in helping you to decide what is the best way to proceed in collection of your outstanding debts.

You may distribute this guide to a friend provided no alterations are made.

The material contained in this report is provided for general information purposes only and does not constitute legal or other professional advice. Whilst every care has been taken in the preparation of the contents, specific legal advice should always be sought on the application of the Law in any particular situation.

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## ***Small Claims Procedure***

The Small Claims procedure is an alternative method of commencing and dealing with a civil proceeding in respect of a small claim and is provided for under the District Court (Small Claims Procedure) Rules, 1997 & 1999.

It is a service provided by District Court offices and is designed to handle consumer claims cheaply without involving a solicitor.

To be eligible to use the procedure, you, the "consumer" must have bought the goods or services (or the service) for private use from someone selling them in the course of business.

The procedure is not available for use by one business person against another.

You should bring your claim in the District Court area where:

- the respondent lives or carries on business, OR
- the contract was made, OR
- in the case of damage to property, where the damage took place.

The District Court Clerk, called the Small Claims Registrar, processes small claims.

Where possible, the registrar will negotiate a settlement without the need for a court hearing. If the matter cannot be settled the registrar will bring your claim before the District Court.

### **Type of claims dealt with**

(a) a claim for goods or services bought for private use from someone selling them in the course of a business (consumer claims)

(b) a claim for minor damage to property (but excluding personal injuries)

(c) a claim for the non-return of a rent deposit for certain kinds of rented properties. For example, a holiday home or a room / flat in a premises where the owner also lives provided that a claim does not exceed €2,000.

Claims in respect of other matters relating to rented accommodation must be brought to: Private Residential Tenancies Board,

Excluded from the small claims procedure are claims arising from:

- (a) a hire-purchase agreement
- (b) a breach of a leasing agreement
- (c) debts

In making a claim you must be sure of the name and address of the person or company against whom you want to make a claim. These details must be accurate in order to enable the Sheriff to execute the Court Order (Decree).

When a Respondent is a company, rather than an individual, it is important to ascertain the correct title of the company. This may be obtained from the Companies Registration Office [www.cro.ie](http://www.cro.ie)

### ***How to Make a claim***

Contact the District Court Office in the area where:

- the respondent lives or carries on business,
- OR
- the contract was made,
- OR
- in the case of damage to property, where the damage took place.

The Small Claims Registrar will provide you with the application form or you can download the Small Claims Application form from [www.courts.ie](http://www.courts.ie)

The fee for making a small claim is €15.

The completed application form together with the fee of €15 should be lodged with the Small Claims Registrar.

A copy of the completed application form will be sent by the Registrar to the person/party against whom you are making a claim, called the Respondent.

The original application form will be kept in the Registrar's office.

## **If your claim is disputed**

If the Small Claims Registrar receives a notice from the Respondent disputing your claim or making a counterclaim against you, the Registrar will contact you and let you have a copy of the Respondent's answer.

The Registrar may interview and negotiate with both parties to try to reach an agreement.

## **If your claim is not disputed**

If the Respondent admits your claim he/she is required to notify the Registrar's office by returning a Notice of Acceptance of Liability form. If the Respondent does not reply, the claim will be automatically treated as undisputed.

The District Court will then make an order in your favour (without you having to attend court) for the amount claimed, and direct that it be paid within a short specific period of time.

## **A counterclaim**

A counterclaim is a claim made against you by the Respondent.

## **Failure to resolve a claim**

If the Small Claims Registrar is unable to bring about a settlement he/she will bring the case to the District Court for a hearing, if requested to do so and the Small Claims Registrar may call both parties to his/her office where a private and informal meeting will be held.

The Small Claims Registrar will probably ask you and the Respondent to outline the facts.

He/she may question both parties in an effort to clarify the issues.

If an agreement cannot be reached the Small Claims Registrar may then and then fix a date, time and location for a hearing of the claim before a judge of the District Court.

The date and time of the hearing and the address of the courthouse will be sent to both parties by post.

## **The District Court hearing**

You must attend the District Court hearing.

On the court day remember to bring with you documentary evidence supporting your claim, e.g. letters, receipts, invoices.

The case will be heard in public as part of a normal sitting of the District Court.

Evidence must be given under oath or affirmation and the Respondent can question you on matters relating to your claim (called cross-examination).

The judge may require the Small Claims Registrar to assist the court at the hearing.

When your case is called the Court Registrar will call you to the witness box to give evidence.

The Respondent will also be given an opportunity to give evidence.

Each witness can be subject to cross examination by the opposing party or their legal representatives.

## **Engaging a solicitor**

You may engage a solicitor at your own cost but the whole reason for the small claims procedure is the minimization of the cost to you, the claimant.

## **Engaging a witness**

You can bring a witness, but if expenses are incurred you will have to pay those yourself.

If you think it necessary, in your own interest, to have an expert's report you will have to pay for this. Expert reports and witness expenses must be paid for by you.

Likewise, if the Respondent calls experts or witnesses he/she will be liable for their costs, if any.

### **If a witness does not agree to attend**

The Small Claims Registrar will, if you request and pay the small requisite fee, prepare and issue a witness summons on your behalf requiring a witness to attend the hearing.

The Small Claims Registrar will arrange service of the summons.

You will be obliged to pay for any financial loss incurred by the witness in attending court, if claimed

### **If the matter is decided in your favour**

If the matter is resolved in your favour, the Respondent will be notified of the court's decision a few days after the hearing and will be allowed approximately 4 weeks to pay the amount awarded by the court.

### **Appealing the decision of the District Court**

Both the Applicant and the Respondent have the right to appeal an order of the District Court to the Circuit Court.

Costs may be awarded by the Circuit Court but that is a matter for the individual Circuit Court judge to decide.

### **If the respondent does not pay**

If the respondent does not pay, you can apply to the Small Claims Registrar to have the order of the court sent to you for execution by the sheriff.

There will be a fee payable to the sheriff, which will be refunded to you if the Sheriff succeeds in executing the court order (decree).

The execution of the court order is then a matter for the sheriff who will notify the claimant.

Information and assistance on enforcement procedures are available from the Small Claims Registrar.

For various reasons the Sheriff may not always be successful in the execution of Court Orders.

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### ***District Court proceedings (sums less than €6,348)***

Where you are owed a sum of less than €6,348 and have exhausted your procedure of issuing demand letters and are clearly having no success the next step in the debt collection process is to issue and serve a Civil Summons claiming your debt on your creditor.

If you then receive no letter of intention to defend the summons then you are free to apply to the District court office, filing the correct documents, for a summary decree.

The documents you need to file in this application are

- 1) An affidavit of debt sworn by yourself or by someone on your behalf ( eg company accountant, company secretary)
- 2) A completed decree form

If the District court is satisfied to enter judgment then you will get your signed decree from the District court and this can be sent to the Sheriff for enforcement.

### ***Circuit Court proceedings (sums less than €38,092.14)***

Again when no defence or appearance is received to your issuing of proceedings(Civil Bill) to obtain your debt you are free to lodge the necessary papers in the Circuit Court office to obtain judgment.

The papers to be lodged in the Circuit Court office are more extensive and you really need the help of a solicitor to do so.

If the debt is defended and contested then it goes to court hearing and assuming you win an award you can obtain the court order from the County Registrar.

## ***High Court (sums greater than €38,092.14)***

For sums of this magnitude you must issue a High Court Summary Summons.

Assuming that no appearance has been entered by your creditor then you can proceed to lodge the necessary papers with the Central Office of the High Court judgments section which will allow you to obtain judgment in default of appearance.

This is a technical and demanding process which will require the assistance of a solicitor.

Once judgment has been obtained it should firstly be served on the defendant. Judgments of all courts can then be registered in the Central Office of the High Court and will appear in trade gazettes such as Stubb's Gazette.

This prospect can encourage a creditor to pay you promptly.

There are various procedures then for summoning before the appropriate court the debtor for the purposes of ascertaining what property and assets the debtor owns. This is a similar procedure which occurs in relation to bankruptcy.

## **Enforcement methods**

### ***Judgment Mortgage***

It is possible to register a judgment mortgage on property of the debtor, even the family home. You can then apply to the appropriate court to force the sale of the house and get paid out of the proceeds. However the courts are reluctant to force the sale of the family home.

It is important to realise that a judgment mortgage can be registered on a family home even without the consent of the non debt owing spouse.

To obtain the judgment mortgage you need to go to the appropriate court and file various documents such as details of the name of the cause, the names and addresses of the parties, the trades or professions of the parties, the location of the lands, the amount of the debt and costs and a statement from the party who is owed the money which must be sworn.

Once the judgment mortgage is obtained then it can be registered in the Land Registry or the Registry of Deeds.

Once the judgment mortgage is registered the creditor can issue proceedings for the sale of the property and if he is successful in this application then the court makes an order for sale and this sale is supervised by the Examiner of the High Court.

### ***Execution Order***

In this scenario you apply to the relevant court for an execution order which, if granted, is sent to the Sheriff for execution. The sheriff then writes to the debtor and has a duty to execute the execution order within a reasonable time.

He has the power to seize all the debtors' moveable goods and has a right of entry into premises but he must not use violence and must have reasonable grounds for believing that there are defaulter's goods on the premises.

An execution order is valid for 12 months but often if the debtor has no goods to seize then the sheriff will return the execution order to the creditor marked 'nulla bona' which essentially means 'no goods'.

However nowadays this procedure can be ineffective in practice as a lot of goods will be leased or supplied to the debtor with retention of title clauses in the contract or on a sale or return basis.

However the existence of bankruptcy proceedings, receivership or liquidation complicates things and the Official Assignee in bankruptcy, the receiver or liquidator all have priority.

### ***Attachment and Committal***

This is a process where a debtor fails to abide by the terms of an instalment order (an order to pay a certain amount laid down by the court) then the creditor can apply to the District court for an order of committal ie an order for arrest and imprisonment.

To apply for this order the creditor will need to lodge with the court the instalment order and a declaration of its service on the debtor.

However if the debtor's failure is due to hardship or inability to pay the Judge will seldom grant a committal order.

### ***Attachments of Debts(Garnishee)***

This occurs where the debtor has no assets apart from debts due to him, then the creditor can apply to have those debts paid to him instead. This can also occur in relation to balances in the debtors bank account, wages due to him and any other sums due to him.

### ***Appointment of Receiver***

Both the High court and the Circuit court have the power to appoint a receiver over a judgment debtor's property to enforce a judgment. When the receiver takes possession it is held for the court who directs what shall be done with it. The receiver has the powers which are given to him by the court.

### ***Bankruptcy***

If you are intending to issuing bankruptcy proceedings against a creditor you should bear in mind the following;

- a) You gain no priority in relation to your debt
- b) Preferential claims will still be paid first ie employees, Revenue Commissioners etc.

Bankruptcy summons will only be granted by the High Court where all other avenues have been exhausted

The Bankruptcy Act 1988 provides 2 methods by which a debtor can make a formal arrangement with his creditors;

- 1) A private arrangement under the control of the court which is very similar to an examinership process for companies.

This involves the debtor setting out the reasons why he is unable to pay his debts and requesting protection from proceedings including Bankruptcy.

When the protection order has been granted the debtor will meet with his creditors and make an offer to them.

If three fifths of the creditors in number and value accept the offer, it is deemed to be accepted

- 2) Private arrangement outside the court. This is a matter of contract between the debtor and his creditors and needs the support of all creditors.

## ***Companies***

Where you are owed money by a company and you know the company is insolvent then you can petition the High Court to wind up the company (section 213 procedure).

To do this you serve a 21 day demand letter on the company; if the debt is not paid within this period the debtor is free to petition for the winding up. Again the petitioner's debt ranks behind preferential creditors such as employees and the Revenue Commissioners.

## **RIGHTS OF CREDITORS**

1) Obtain a judgement against the company by way of "summons for liquidated debt", the amount of debt determines in what Court the summons is issued.

Have the judgement executed by the sheriff or the county registrar.

Have the judgement registered in the High Court which will result in publication in Stubb's Gazette, potentially affecting debtor's credit rating.

Lodge an affidavit with the Property Registration Authority registering the judgement against the debtor's property.

Obtain a Court Order that the company has wilfully defaulted on the payment of its debt.

The Courts have broad powers including the seizure of the company's assets, the director's personal assets and even the imprisonment of the debtor.

This option can be expensive and difficult to prove, and the Courts may take the less stringent approach of for example a stay to allow the debtor pay.

Apply to the High Court, where the company is unable to pay its debts but is not in liquidation for a wide range of reliefs, including arrest, seizure of assets, imposition of personal liability and assessment for damages.

2) Apply to the High Court to have the company wound up under s 213 of the Companies Act and put into liquidation.

## **Powers**

### ***Creditor***

A creditor of a company is a person or company to whom the company owes a debt. Broadly speaking, there are two types of creditor, namely;

### ***Secured creditor***

A secured creditor is a person whose debt is secured on one or more of the company's assets.

### ***Unsecured creditor***

An unsecured creditor's debt is not secured on any of the company's assets.

## **Creditors' Powers**

The most significant power that creditors have under the Companies Acts is to seek to have the company liquidated.

In addition to liquidation and receivership, creditors have various other powers to address defaults in the operation of a company:

Power to appoint a liquidator;

Power to appoint a receiver;

Power to seek the appointment of an examiner;

Power to seek court judgements in respect of debts owed;

Power where default exists; Power to seek an investigation of the company;

Power where a company is not in liquidation;

Power to seek the restoration of the company to the Register of Companies

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