CIVIL AND DELICTUAL CLAIMS

Garnishee Orders South Africa

What is a garnishee order and how is it obtained? Get a quick overview of garnishee orders and the process involved in South Africa by reading this QuickLaw guide.

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For all your domestic violence and protection orders answers, simply follow our guide below:

1. What is a garnishee order (“GO”)?
2. What is an emoluments attachment order (“EAO”)?
3. How is a GO obtained?
4. Can a GO be cancelled, amended or suspended?
5. How can a GO be enforced?
6. What happens if the GO is lost or misplaced?
7. What are the advantages and disadvantages of a GO?
8. How can LegalWise assist you?

1. What is a garnishee order (“GO”)?

- Once a person (“creditor”) has obtained judgment against another person (“debtor”) for the payment of money (“debt”), s/he can enforce such a judgment in various ways. For example, if a debtor fails to pay money in terms of a judgment, the creditor may apply for a GO or an Emolument Attachment Order (“EAO”).
- A GO is an order made by a Magistrate’s Court (“court”), whereby the creditor attaches a portion of a debt owed to the debtor by a third party (“garnishee”). The garnishee will deduct part of the debt or pay all of the debt, due to the debtor, directly to the creditor.
- A GO may be issued against *any* third party for the attachment of *any* debt owing to the debtor and not limited to one type of debt or one type of third party, for example, the income received

from a debtor’s employer like with an EAO.

- For example: if a debtor is required in terms of a court order to make payment in the amount of R5000 per month to his ex-wife for maintenance, but fails to do so, his ex-wife may apply to court for a GO. In terms of the GO the debtor’s lessee (tenant) must deduct R5000 per month from the rent due to the debtor (lessor or owner) and pay it directly to the debtor’s ex-wife.

2. What is an emoluments attachment order (“EAO”)?

- An EAO is an order made by a court, whereby the creditor attaches a portion of the debtor’s income (salary). The debtor’s employer will deduct an amount from the debtor’s income and directly pay it to the creditor.
- For example: if a debtor is required in terms of a court order to make payment in the amount of R5000 per month to his ex-wife for maintenance, but fails to do so, his ex-wife may apply to court for an EAO. In terms of the EAO the debtor’s employer must deduct R5 000 per month from the debtor’s income and pay it directly to his ex-wife.

3. How is a GO obtained?

- A creditor must apply to a court in the area where the garnishee resides, carries on business, or is employed.
- An *ex parte* application must be made in the prescribed form, which must be supported by an affidavit identifying the debtor and garnishee, confirming the judgment made in favour of the creditor, the outstanding debt and the debt payable by the garnishee.
- The debtor and the garnishee will be served a copy of the GO which will include a date on which the garnishee must appear in court if s/he wants to dispute the GO. If the garnishee wants to dispute the GO, s/he must be able to prove why s/he should not pay the debt.
- The court order against the garnishee includes the amount of the debt owed to the debtor (for the past, present and future), legal costs and commission.

4. Can a GO be cancelled, amended or suspended?

- The court may on good cause shown, cancel, amend or suspend a GO.
- If a debtor cannot maintain him/herself or his/her dependants, after a GO has been issued, the court may cancel the GO or amend it in such a manner that the debtor, and his/her dependants, will have sufficient means to survive.

5. How can a GO be enforced?

- If the garnishee does not dispute a GO, that GO may be enforced in the same manner as if it were a judgment of the court. This means that if the garnishee defaults on payment, a warrant of execution may be issued against him/her. The warrant of execution will be sent to the sheriff, who will attach the property of the garnishee to sell that property at an execution auction.

6. What happens if the GO is lost or misplaced?

- A creditor, or any interested party, may make an application to the court for the reissue of a GO.
- A court will not reissue a GO that has terminated/expired; the creditor will have to make a fresh application for a new GO.
- In a case where the GO reappears, after disappearing, it must be cancelled by the clerk of the court.

7. What are the advantages and disadvantages of a GO?

Advantages	Disadvantages
It gives the creditor an opportunity to recover his/her debt from the debtor.	It has a negative effect on the debtor's credit record.
It assists the debtor to pay off a debt that is owing.	The order may be made when the debtor is not present in court.

8. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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