



GENERAL GUIDE – ENFORCEMENT HEARINGS (Rates Effective 01/09/11)

The Enforcement Hearing (EH) process can only be started after you have obtained a judgment against a debtor in the Magistrates Court of Queensland or the QCAT (for smaller minor debts). All states have some form of EH process in place however this information sheet deals with the Queensland process only.

Often once you have obtained a judgment against a debtor, you are left wondering what the next step should be in the recovery process. Does the debtor own any property, are they employed or self employed, what is their income, what other debts do they owe and to whom, what assets do they have? All of these questions are important in considering the next step after judgement.

Remember, sometimes the judgement alone will create sufficient trouble for the debtor if it remains unpaid. The judgement is automatically listed by the Magistrates Court against the VEDA credit file of the judgement debtor/s. Most providers of credit in any form will search the records of VEDA to establish an applicant's credit worthiness. This includes banks, finance companies, telco's, utilities providers, real estate agents for rental applications, retail stores for their "pay nothing for X months" deals and a multitude of others. If an applicant has an unpaid judgment their likelihood of being approved in today's credit climate is next to none. If they pay your debt out we will ask the court to list the judgement as "paid", this will make their credit file appear slightly more attractive to credit providers, but only slightly.

Considering the effects of a judgement and the costs of enforcing that judgement against the value of the debt you are chasing, leads us to next questions. What to do.....

On July 1st 2010 the Uniform Civil Procedures Rules changed in Queensland affecting the way we go about the enforcement hearing process.

An enforcement hearing in short will require that the judgement debtor complete a Statement of Financial Position detailing all of their assets, liabilities, income and expenses. This allows you to consider the next most appropriate step in the recovery process.

The first step is to post a Form 71 Statement of Financial Position to the debtor by mail. They debtor has 14 days to complete and return this form to us along with evidentiary documents supporting their statement, such as pay slips, bank statements etc. Using this information we can then consider the most appropriate recovery action to take.

If however, the judgment debtor does not return the Form 71 and supporting evidence within 14 days, we may then make an application to the court to have an Enforcement Hearing Warrant issued. Nexus will arrange an application to be made to the court for the issue of an EH Warrant.

Once filed, the court will set a date for the hearing requiring that the judgment debtor attend at the court at a set date and time to explain their financial circumstances, complete the Form 71 and show evidence of their statements. The hearing will generally be held in the court closest to where the debtor resides. Nexus will arrange for a qualified agent to attend on your behalf at the hearing. You cannot represent yourself at these hearings. You will then receive a detailed report with our suggestion as to the most appropriate method of recovery based upon the information provided.

If a judgment debtor fails to appear at court on the day of the hearing and fails to give an acceptable reason as to why they could not appear, we may then arrange for a warrant to be issued for the apprehension (arrest) and detention of the debtor until such time as a hearing can be held.

The costs involved are as follows:

1. Prepare & issue the Form 71 to the debtor: **\$35.00**
2. Preparation and filing of an Enforcement Hearing Warrant: **\$155.00**
3. **Solicitors Professional Fees (if the original claim was filed in the Magistrates Court): \$240.00**
4. Attendance at the hearing by a properly qualified agent: **\$75 - \$110.00**

The EH Warrant must be served on the debtor personally, Nexus will arrange service of the document at an estimated cost of **\$65.00** for Brisbane Metro and major regional centres where our affiliate agents operate. This cost may increase if multiple attempts need to be made to effect personal service on the debtor.

All told, your cost outlays may be around \$360.00 to complete the EH Process.

It is important to note that the EH process is NOT a method of enforcing your debt as such, it is merely a method of establishing to the best extent possible the true financial position of the judgment debtor. This then allows you to consider the next step in recovering the debt.

The cost of an Enforcement Hearing are mostly not recoverable against a judgement debtor in the first instance.

DO NOT assume that the cost guidelines given above will be the **ONLY** costs you outlay.

We are happy to discuss the process with you in more detail any time, our ultimate aim is to secure payment of the money owed to you, we only get paid when you get paid.