

DEBTS

Many households having run up large amounts in consumer debt and with the credit crunch some are having difficulty in paying their debts. The following is a resumé of the steps that creditors take to recover debts through the Courts.

1. Although they are not obliged to do so, most creditors give their debtors ample warning of their intention to take proceedings for the recovery of a debt. It always pays for the debtor to approach a creditor to try to come to a mutually acceptable payment programme.
2. When it is clear that a debtor is not going to pay a debt a creditor will either file the proceedings in the Court or have a lawyer or debt recovery company attend to that on their behalf. The proceedings set out the amount owing, the date of the debt was incurred and what it was for.
3. A process server will then deliver a copy of the proceedings to the debtor. At this time the debtor should raise any defence or counterclaim he/she may have in respect of the debt.
4. If the debtor takes no steps to defend the proceedings, the creditor may enter judgment against the debtor once the statutory period of time has elapsed.
5. Once judgment has been entered the creditor is entitled to take enforcement action against the debtor. There are 2 main methods of enforcement. An order for examination may be set so that the debtor is required to attend the Court and be examined as to his/her means to pay the debt. If the debtor has funds to pay or makes an offer to pay by instalments the Registrar will make an order for payment, usually by attachment to wages or benefit. If the creditor is aware that the debtor has assets, the creditor may apply for a Distress Warrant which authorises a Court Bailiff to seize and sell the debtor's assets to pay the debt.
6. Very often neither action produces satisfactory results and the creditor then needs to decide whether it would be worthwhile to transfer the judgment

obtained in the District Court to the High Court and pursue the debtor through the bankruptcy jurisdiction.

Bankruptcy always sounds like the ideal solution when a debtor cannot pay his/her debts. It is not an easy option and the stigma of bankruptcy lasts a life-time. It is also questionable whether a debtor who runs up debts without having the means to pay, and then becomes bankrupt, is a person of any moral fibre.

Needless to say, debt recovery can become a very expensive process for a creditor who does not recover their debt.

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