

How will a creditor collect from me if I lost my case in Massachusetts?

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After a judgment is entered, the next document to issue is called an execution. The execution is what empowers the sheriff's office, as it is directed by the creditor, to collect from you. Depending on the circumstances and the court the case is in, an execution is to be issued by the clerk's office either 10 or 30 days after judgment. However, speaking from experience, some clerk's offices may not be up to date and it could take much longer for it to actually issue the execution to the creditor.

With an execution, a creditor has many avenues from which to collect. Such as levy on personal property, levy on real estate, wage attachment, keeper attachment, receivership, and what is known as supplementary process. With respect to wage attachment, keeper attachment, and receivership, they require a separate suit after judgment has issued. If the case was originally in small claims, a "payment review" hearing may occur prior to the creditor obtaining an execution.

One popular way in which a creditor collects is by levy (and suspend) on real estate. What happens is that the creditor instructs the sheriff to levy and suspend further action on your real estate, usually your residence. The execution is recorded at the registry of deeds and acts essentially as an attachment of your house. The good news is that there is nothing forcing you to pay immediately, the bad news is that you cannot transfer title to the house without satisfying the execution and it accrues interest.

The most popular avenue that creditors use is supplementary process. It is formally a separate action (\$40 filing fee) but only requires a simple form to be completed. It is either handled by the small claims division or the district court division of the court. You will get served by a sheriff with a summons under this new supplementary process case to appear at court. If you do not appear, the creditor can request, and most likely will obtain, a *capias* warrant for your arrest. Then the creditor has two options, either have the sheriff physically arrest you, or get the debtor to promise to appear at another court date, and it is usually the latter.

If you do appear at the supplementary process hearing, you will have to answer as to your ability to pay. The clerk or judge, sometimes with the creditor's assistance, evaluate whether you have non-exempt assets or non-exempt income to pay the judgment. Most debtors avoid this evaluation though as they make an agreement with the creditor at that hearing but prior to that evaluation to pay a certain amount a month. That agreement actually is a court order for you to pay, and if you do not, you could be found in contempt. As an aside, if you find yourself unable to pay, be proactive and contact an attorney before they find you in contempt.

If the clerk or judge does find that you do not have any non-exempt assets from which to collect, the case may be dismissed or scheduled for payment review within a certain

period of time such as 6 months or a year. When someone is found to not have assets or income available to pay, that is what is referred to as “judgment proof.”

Generally, the supplementary process session is not a happy place to be and for the most part, it is the end of the line. The most important mistake people make is arguing the merits of the original case, which is common and will likely be quickly rebuked as it is not the place or the time to do so.

It is also a place that you are playing with fire if you decide to not make a deal with the creditor and most people are on unfamiliar turf. So, it is best to have an attorney by your side if you are entering the lion’s den.

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