

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Dstraint

CS 507.3

SUPERSEDES

CS 500.7 Enforcing A Support Lien by Warrant for Dstrain, September 27, 2016

REFERENCES

MCA § 25-13-801 et seq., 40-5-247; ARM 37.62.307

Applicability

This section contains procedures for enforcing a support lien by seizing property due, owing, or belonging to the obligor. **Where the property is state lottery winnings, special procedures in CS 507.5 Lottery Liens, apply; do not proceed with a warrant for dstraint in this section until all applicable requirements in 507.5 have been met.**

Introduction

Support liens are enforceable by service of a warrant for dstraint. This method is available regardless of whether the underlying lien has been perfected by the Child Support Services Division (CSSD).

In the case of a perfected lien, the notice of support lien commands a third party in possession or control of an obligor's property to notify the CSSD regarding the existence or pending sale of the property. Upon notification, the CSSD will prepare and issue a warrant for dstraint to be served on the third party. The warrant may be served by a sheriff or levying officer, or by regular mail for the third party's acknowledgment.

In the case of an unperfected lien (existing only by operation of law), the CSSD will issue the warrant for dstraint directly upon identifying appropriate property.

Policy

Use of the Warrant for Dstraint: Administrative Options

The CSSD can realize a cash collection from the property of the obligor in three ways; two of these require a warrant for dstraint, the other may involve a warrant for dstraint but generally does not:

- 1) Warrant for Dstraint with Notice of Support Lien. The CSSD discovers money or other property due the obligor from another party. To secure the property for execution the CSSD perfects a lien on the property by filing the appropriate notice of support lien; see CS 507.2 Perfecting a Support Lien. Before transferring the property to the obligor, the other party notifies the CSSD, which then executes on the property via warrant for dstraint.

EXAMPLE: Insurance settlement; the insurance company notifies the CSSD when the payment is ready and pays the money to the levying officer or the CSSD as directed in the warrant.

- 2) Warrant for Dstraint without Notice of Support Lien. The CSSD discovers money or other property of the obligor's on deposit with another party or held by the obligor's business. The CSSD executes on the property via warrant for dstraint. In this situation perfection of the support lien prior to execution is neither required nor appropriate.

EXAMPLES: Bank account; the bank pays the levying officer or the CSSD as directed in the warrant; business "till" contents--the levying officer seizes the cash.

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Dstraint

CS 507.3

- 3) Notice of Support Lien without Warrant for Dstraint. The CSSD perfects a lien on the obligor's property by filing the appropriate Notice of Support Lien (CS 507.2). The obligor arranges to sell the property, and the buyer or another entity involved in the sale discovers the lien and diverts some or all of the proceeds from the sale to the CSSD in exchange for release of the lien. In this situation seizure of the property is not required.

EXAMPLES: Real property: the title insurance company pays the CSSD directly. Automobile: the financial institution making the loan to the purchaser pays the CSSD directly.

Technically, the CSSD could convert this property to cash at any time by issuing a warrant for dstraint. In practice, however, the CSSD chooses to rely on the more passive use of the lien, which produces a collection only in the event of a voluntary sale.

Distribution of Proceeds

After seizing the property the sheriff or levying officer will, if necessary, conduct a sale. Proceeds of the seizure or sale are used to pay for the costs incurred by the sheriff or levying officer, any superior liens, and then the support lien or other money obligation. Remaining funds must be used to satisfy inferior liens, and any excess must be returned to the obligor. Consequently, care must be taken in determining which assets should be seized and sold. The anticipated sale price should be great enough to cover the costs involved in the seizure, to pay off any existing superior liens, and then to pay the support lien in whole or in substantial part. In cases where the property is already in the form of cash and the warrant is served by acknowledgment, the CSSD generally relies on the property holder to subtract the amount of any superior liens before remitting payment.

Adjudicated Debts Only

Unlike the writ of execution (CS 504.1) the warrant for dstraint is available only to enforce adjudicated debts, including interest and fees. Adjudicated debts, for purposes of this section, are sum certain amounts (1) contained in a final decision entered by the CSSD in a contested case, (2) contained in a foreign support order confirmed in a CSSD or Montana district court registration proceeding, or (3) contained in a Montana district court judgment. Technically, the CSSD can also use the warrant for dstraint to collect current support obligations from the obligor's payor, but does not do so, preferring to rely on the more efficient remedy of administrative income withholding for this purpose. For distribution purposes pursuant to federal and state law, the collection must be distributed first to current support, then to arrears.

NOTE:

Request to move a payment from current to arrears. When a payment from a warrant for dstraint applies to current support *prior to* receiving an income withholding payment for the same month, an adjustment request can be made to move the payment to the arrears.

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Dstraint

CS 507.3

Requirements for Notice and Hearing

Montana law requires the CSSD to provide notice and opportunity for hearing to an obligor whose property is seized by warrant for dstraint. The law allows the CSSD to limit the hearing to the issue of whether the obligor's property is exempt from execution. CSSD has expanded the issues determined at hearing to also include, upon request, (1) whether the amount of the warrant includes any unadjudicated debt or (2) whether the amount of the warrant omits payments made since the last adjudication.

Notice is contained in the warrant for dstraint itself. The sheriff or levying officer, or the CSSD, sends a copy of the warrant/notice to the obligor promptly after seizure. The obligor has 10 working days from the date the warrant/notice is mailed to request a hearing with the CSSD.

Notice to Property Holder

At the time of seizure, the CSSD also notifies the property holder of the specific exemptions allowed for net earnings of the obligor. This notification is required by law for a writ of execution; the CSSD includes it with the warrant for dstraint to keep the two processes parallel, and to afford additional due process to the obligor.

Privacy Protection

Where the property to be seized is located in the obligor's residence, or in any other area determined by the sheriff or levying officer to be subject to a reasonable expectation of privacy, the CSSD must seek a warrant of execution from the court before proceeding against the property. The judge can issue a warrant of execution upon determining there is reasonable cause to enter, and to levy upon property in, an area otherwise protected by the obligor's right of privacy. Reasonable cause generally requires a showing that there is no other property of the obligor's available for levy and execution.

As a matter of policy, the CSSD does not proceed against property located in the obligor's private residence. In cases involving personal property located outside of the obligor's residence, the CSSD proceeds only if it believes the right of privacy does not apply. Only in extremely rare situations, where the facts of the case appear to justify the additional proofs and actions required, will the CSSD consider an exception to this policy. **In all cases involving possible privacy protections, consultation with and approval of the CSSD staff attorney is absolutely required.**

Prevention of Forced Sale

An obligor or other party having an interest in the property may prevent a sale of the seized property at any time prior to the sale. To prevent a scheduled sale, the obligor or other party must pay the CSSD the full amount of the support lien, plus any costs incurred by the sheriff or levying officer in serving the warrant.

Redemption of Real Property after Forced Sale

Montana law at MCA § 25-13-801 et seq. extends special protection to the owner of real property that has been sold to satisfy a judgment or support lien. An obligor or another party with an interest in the property may **redeem** the parcel by buying it from the purchaser. Redemption must take place within 240 days of the date of the sheriff or levying officer's sale.

Redemptions may affect CSSD operations when real property is sold at a sheriff's sale to satisfy a lien.

Redemption means to repurchase or buy back. A judgment debtor may redeem real property that was sold by the sheriff or levying officer in order to satisfy a judgment debt or support lien.

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Distraint

CS 507.3

Example: An obligor owes a judgment to CSSD for \$10,000. The CSSD owns the only lien on the obligor's home and forces execution and sale of it. A third party buys the home and CSSD gets paid from the proceeds. Then, the obligor may redeem the home within 240 days by paying the redemption amount (which is calculated according to statute). If the obligor redeems the home, the obligor now owns it, and the third party gets his or her investment plus a statutory fee from the obligor.

If there is more than one lien on a piece of property, the sheriff's sale and redemption procedure is more complex. If the child support lien is not a first priority lien, the sheriff's sale may not yield enough money to pay the first liens and also the child support liens. However, if the obligor redeems the property after the sheriff's sale, the CSSD may then get the value of its lien.

The numbers of persons who may redeem real property are limited. These persons are called redemptioners. The following people may be redemptioners under MCA section 25-13-801 the obligor; the obligor's spouse; the obligor's successor in interest (may be a shareholder of a corporation); or a judgment creditor.

The CSSD does not generally take advantage of its role as a redemptioner, because the CSSD cannot benefit from the ownership of property. Therefore, this procedure section does not explain the method for redeeming property.

NOTE:

If property is redeemed, the CSSD will probably receive no notice of the redemption unless the redemption satisfies an existing child support lien. If it does satisfy an existing child support lien, the CSSD will know that a redemption has occurred because the CSSD will receive a check for the amount of the lien. If you believe that a redemption has occurred, consult your CSSD staff attorney.

Procedures

To execute support liens or to enforce support obligations.

SHERIFF DEFINED: The term sheriff as used in these procedures means the county sheriff or any other levying officer.

PLEASE NOTE: The following procedures contain steps taken by the sheriff as the CSSD understand them. These steps are included for purposes of context only, and do not assert or require the stated action. **The CSSD's policies and procedures are not binding on the sheriff's office or any other external agency.**

Procedures for Caseworker/Paralegal

1. Upon identifying property held by another party, or by the obligor's business, that is due, owing, or belonging to the obligor, determines whether the case is suitable for enforcement by warrant for distraint as in NOTE 2 below. If the warrant is served by the sheriff, identifies the county where the property is located, and proceeds to step 2.

If the warrant can be served by acknowledgment, takes no further action in this section and proceeds to section CS 507.6, Service of the Warrant for Distraint by Acknowledgment.

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Dstraint

CS 507.3

NOTE 1:

Obligor in Personal Possession. In very unusual situations these procedures may also apply for property held directly i.e., not through a business by the obligor. Consult the CSSD staff attorney if it appears action may be appropriate.

NOTE 2:

Suitable Cases. For purposes of these Procedures a case is suitable when all of the conditions in 1) through (4) below apply. In questionable cases consult the CSSD staff attorney.

- 1) A warrant for dstraint is required to ensure the collection, see policy above.
- 2) The case meets all of the conditions for an appropriate case as in CS 507.1, Support Liens-- Overview, relating to the support order, the delinquency, and the applicability of income withholding or other enforcement remedies.
- 3) The amount to be included in the warrant meets the conditions given in policy above regarding Adjudicated Debts Only.
- 4) The value of the property is high enough to cover costs and other claims in addition to satisfying the support lien, see policy, Distribution of Proceeds.

NOTE 3:

Non-Cash Assets. If the property is a non-cash asset, the caseworker/paralegal should work with the CSSD staff attorney to determine whether to proceed against the property. If a seizure action is indicated, the caseworker/paralegal must continue to work with the attorney to coordinate actions by the CSSD, the sheriff, and others for successful seizure, maintenance, sale, and distribution of proceeds.

2. Prepares a Warrant for Dstraint package containing the following documents:

- 1) CS 507-3A Warrant for Dstraint (original)--directing the sheriff of the county where the property is located to levy against the property described in the warrant, and to return service and any proceeds to the CSSD.

The Warrant for Dstraint also contains a Notice of Seizure and Right to Claim Exemptions addressed to the obligor. This notice informs the obligor of his or her right to claim exemptions in the property seized under the warrant and provides a Request for Exemption Hearing for that purpose.

- 2) CS 507-3B Sheriff's Praeipce for Warrant for Dstraint (original)--giving the exact location of the property to be seized, alerting the sheriff to the 1999 requirements for seizure by warrant for dstraint, and providing a checklist of the steps the sheriff must take to execute the warrant.
- 3) CS 507-3C Notice of Levy and Exemptions (original)--notifying the property holder on whom the warrant is served of the levy against the obligor, directing the property holder to transfer the property to the sheriff, and describing the statutory exemptions for earned income.

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Dstraint

CS 507.3

- 4) If applicable, additional documents required by the sheriff's office for execution of a warrant or required in connection with the seizure and sale of a non-cash asset.

EXAMPLES: Answer to Garnishment; arrangements for sheriff's sale; agreements for costs of maintaining property before sale; notice to holders of superior claims.

Consult your CSSD staff attorney or paralegal to determine which of the above documents may apply.

- 5) For the sheriff's use— a stamped envelope pre-addressed to the obligor.
- 6) A completed CS 507-6C Request to Issue Warrant for Dstraint, identifying the desired method for transmitting the warrant package to the sheriff, see the OPTION below and in step 3. Signs the sheriff's praecipe, makes a copy of the complete package for the case file, and sends the package to the Office of Administrative Law Judge.

OPTION: According to personal or regional preference, the caseworker/paralegal may ask the Office of Administrative Law Judge (OALJ) to return the issued warrant to the region, for the caseworker's/paralegal's transmittal to the sheriff. In this case the package sent to the OALJ is limited to the Warrant for Dstraint in item, and the request in item. The package the caseworker/paralegal sends to the sheriff must contain the same items as the package sent from the OALJ in step 3.

Procedure for OALJ

3. Upon receipt of a warrant package prepared in step 2, reviews the package for completeness and obtains the signature and seal of the Administrative Law Judge (ALJ) on the Warrant for Dstraint. Makes four copies of the issued warrant.

Unless the caseworker/paralegal has requested return of the issued warrant to the region, see the OPTION below, assembles and mails the warrant package to the sheriff, retaining one complete copy for the case file. The sheriff's package must contain the original issued warrant and two copies, and items 2) through 5) from step 2. above.

Sends the remaining copy of the issued warrant to the caseworker/paralegal and enters a SEARCHS case note for the warrant for dstraint issued and sent to the sheriff.

OPTION: If the caseworker/paralegal has requested return to the region, the OALJ should simply issue the warrant, returns a copy to the region, and enters a case note for the warrant for dstraint issued.

Procedure for Caseworker/Paralegal

4. Responds to contingencies in the seizure process as in steps 4a and 4b below.
 - a. If notified by the sheriff that a warrant of execution is required for the property in question, consults with the CSSD staff attorney to determine whether continued enforcement against the property is advisable in the case. If so, works with the staff attorney to take appropriate action, see policy above.
 - b. If at any time before the warrant is executed or before the proceeds are delivered the CSSD receives payment in full of the warrant amount as a result of other enforcement actions, works with the CSSD staff attorney to recall or release the warrant.

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Distraint

CS 507.3

Sheriff

5. Within 120 calendar days after the date of issuance, serves the warrant and the notice of levy on the property holder, and seizes the property or arranges for transfer of the property to the sheriff's control or possession.

NOTE:

Service Procedures. The sheriff serves the warrant on the property holder by personally presenting, but retaining possession of, the original (issued) warrant, and furnishing a copy of the warrant for the property holder to keep. The sheriff serves the notice of levy by personally delivering the original document.

6. Within 5 days after execution of the warrant, completes the certificate of mailing in both the original and the remaining copy of the Warrant for Distraint. Sends the completed copy of the warrant to the obligor by regular mail.

Monitors for notification of a hearing request within 10 working days plus 3 mailing days after the date entered in the certificate of mailing.

- a. If notification of a hearing request is timely received, takes no action against the property until notified of the CSSD's determination; then proceeds to step 15.
- b. If notification of a hearing request is not timely received, proceeds immediately to step 15.

NOTE:

Response Requirements. The obligor may respond to the Notice of Seizure and Right to Claim Exemptions by requesting an exemption hearing with the CSSD within 10 working days of the date the sheriff mailed the warrant containing the notice. The obligor must mail a copy of the request to the sheriff on the same date the obligor submits the request to the CSSD.

NOTE:

The time frames for CSSD actions in steps 7 through 10 below are established as processing guidelines only. They are not required by statute, but reflect the CSSD's efforts to afford the obligor, whenever possible, the same speedy resolution as in exemption hearings in district court.

Procedure for OALJ

7. Upon receipt of a request for an exemption hearing, enters a SEARCHS case note for the hearing requested, and immediately takes the following actions:
 - a. Submits the request to the ALJ for a determination to grant or deny.
 - b. Faxes a copy of the request to the caseworker/paralegal.

Expedites the processing in this and subsequent steps to ensure that a hearing, if granted, is conducted within the time frame described in step 10.

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Distraint

CS 507.3

Procedure for Administrative Law Judge (ALJ)

8. Within 24 hours of receiving a request in step 7, makes a determination as follows:

If the request for exemption hearing was received by the OALJ within 10 working days after the date entered in the certificate of mailing by the sheriff, **and** the request contains one of the reasons in 1) through 3) below, grants the hearing; otherwise, denies the hearing:

- 1) To claim an exemption in the seized property
- 2) To contest the amount of the warrant, claiming it includes unadjudicated amounts
- 3) To contest the amount of the warrant, claiming payments were made since the last adjudication.

Procedure for Caseworker/Paralegal

9. Upon receiving a copy of a request for an exemption hearing from the OALJ in step 7., proceeds in steps 9.a and 9.b below.
- a. Within 24 hours, informs the OALJ of any dates the caseworker/paralegal will **not** be available for hearing.
 - b. If appropriate, immediately contacts the obligor to attempt to resolve the issue; if an exemption in the property, an error in the CSSD's debt amount, or some other reason not to execute on the property is discovered, takes appropriate steps to correct the pending action. In questionable cases, works with the CSSD staff attorney. If necessary, explains the process for formally withdrawing the hearing request to the obligor.

Procedure for OALJ

10. Within 24 hours after receiving the request in step 7., processes the hearing request as follows:
- a. If the hearing is granted, prepares, and obtains the ALJ's signature on a Notice and Order for Exemption Hearing granting the hearing and setting a hearing date within 10 working days after the notice and order issue date. Sends copies of the order to the parties, the obligee, and the sheriff.

The order should also provide instructions for telephone hearings; give the requirements for exhibits, subpoenas, and discovery; inform the obligee he or she may attend the hearing to observe as a non-party; and direct the sheriff to hold any seized property pending the outcome of the hearing.
 - b. If the hearing is denied, prepares, and obtains the ALJ's signature on an order denying the hearing, giving the reason, and notifying the obligor of the opportunity for judicial review. Sends copies of the order to the parties and the sheriff.

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Distraint

CS 507.3

Procedure for Caseworker/Paralegal

11. Upon receiving a Notice and Order for Exemption Hearing works with the CSSD staff attorney to prepare testimony and exhibits and arrange for witnesses. Submits exhibits according to regular CSSD procedures and appears at the hearing as a witness, proceeds to step 14.

Procedure for ALJ

12. Conducts the exemption hearing and determines the exemption claim or the support amount due, as applicable.
Issues a decision and order containing the determination, specifying the amount of any exemption and the amount due the CSSD under the warrant, and notifying the parties of the opportunity for judicial review.

Procedure for OALJ

13. Obtains the ALJ's signature on the decision and order, and sends copies to the parties, the obligee, and the sheriff. Enters the appropriate SEARCHS case notes for the hearing held and the decision and order issued and mailed.

Procedure for Caseworker/Paralegal

14. Upon receipt of the exemption hearing decision and order, enters the appropriate SEARCHS case note and proceeds to step 17.

Sheriff

15. Determines whether the gross proceeds expected from the seizure and sale if necessary, of the property exceed the total of any superior liens, sheriff's fees, and exemptions.
 - a. If so, sells the property if necessary, and distributes the proceeds as required to satisfy the applicable liens, fees, exemptions, and CSSD judgment; distributes any excess proceeds to the obligor.
 - b. If not, returns the property to the obligor.
16. Completes the warrant for distraint process by preparing and sending to the CSSD:
 - A return-of-service document listing the date and method of service of the warrant and any accompanying notice of levy, and the amount of any proceeds payable to the CSSD.
 - A check for the amount of the net proceeds, if any, up to the amount of the warrant.
 - The original (issued) warrant for distraint, showing the date the warrant was mailed to the obligor.
 - Any additional documents as appropriate for example, an Answer to Garnishment from a third party.

NOTE:

Continuing Levy. If the proceeds do not satisfy the full amount of the warrant, and if additional levies may be practical, the sheriff may retain the original warrant and seize additional amounts that become available within the 120 days before the warrant expires.

ESTABLISHING A SUPPORT ORDER

Enforcing a Support Lien by Warrant for Dstraint

CS 507.3

Procedures for Caseworker/Paralegal

17. Upon receipt of the sheriff's return of service, enters the appropriate SEARCHS case notes for the warrant served, the copy mailed to the obligor, and the service returned.

When the opportunity to request a hearing has passed, or when an order is received from the OALJ denying a hearing or entering a hearing decision and order, immediately arranges for distribution of any proceeds as described in steps 17a through 17c below.

- a. Copies the check, sends the original to TAPP with the appropriate back-up documentation or notation on the check identifying the pay source (warrant for dstraint) and the obligor (SEARCHS participant identification number); retains a copy for the case file.
 - b. In cases involving multiple obligees or other special distribution requirements prepares a Manual Payment Instruction (MPI) to supplement the information submitted with the payment and enters the MPI on system.
 - c. Informs the Regional Manager of receipt of the proceeds and of the net dollar amount, for lump-sum collections tracking purposes.
18. Makes a copy of the original, issued Warrant for Dstraint with the sheriff's certificate of mailing completed and the sheriff's return of service for the case file, sends the originals to the OALJ for filing, and enters a SEARCHS case note for the returned warrant sent to the OALJ.
 19. If prior to issuance of the Warrant for Dstraint the CSSD perfected a support lien on the subject property, and the lien amount has been decreased by the proceeds from the seizure or by the decision and order in step 12., follows the procedures for release of lien or partial release of lien in section CS 507.4 Releasing a Support Lien.

Procedure for OALJ

20. Upon receiving the returned warrant and sheriff's return from the caseworker/paralegal, files the documents and enters a SEARCHS case note for the returned warrant filed.