

SEIZURE

The seizure may be opposed on the following grounds:

- an irregularity in the seizure causes you serious prejudice;
- the property is exempt from seizure;
- the debt is extinguished.

If some of the property seized does not belong to you, its real owner can oppose the seizure or the proposed sale. Your other creditors can protect their right to be paid by presenting a statement of their claim to the bailiff, along with supporting documents. This allows them to take part in the division of the money derived from the sale of your property. The court must rule on every case of opposition, whatever the type of seizure.

Seizure before judgment

Seizure before judgment is a protective measure that may be exercised with or without authorization from the court.

With court authorization

A creditor who believes that you could sell your property to avoid having it seized may ask the court for authorization to carry out a seizure before judgment. If the court agrees, the bailiff may carry out the seizure and give custody of the property to a third person, except in some specific cases.

Without court authorization

A seizure before judgment without court authorization is possible when, for example, your creditor wishes to recover property that the plaintiff has the right to revendicate.

When property is seized before judgment, the bailiff gives you a notice of execution, along with an affidavit stating the existence of the debt and the reasons for seizure, and proceeds to seize the property. You can contest the seizure and the affidavit, and the court will make a decision based on the evidence submitted to it.

For more information

The information summarized in this document was valid at the time of printing. For more information, go to the website of the Ministère de la Justice at www.justice.gouv.qc.ca, or contact

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Imagine that you owe money to an impatient creditor and are having difficulty paying off your debt. You try and fail to reach an agreement. Your creditor goes to court and obtains a judgment ordering you to pay what you owe.

If you are still unable to pay off your debt, your creditor may decide to seize your property. Before taking this step, your creditor may decide to check if you have enough income or property to cover at least part of your debt. This means that you may receive a summons to answer questions about your finances in court. In a case like this it would be a mistake not to attend court, since you could receive a penalty.

Types of seizure

A creditor may carry out a seizure in the hands of a third person, a seizure of movable property, or a seizure of immovable property. The creditor must instruct a bailiff, who will then draft a notice of execution, which specifies the date of the judgment against you and the amount of money you owe. The bailiff files the notice with the court and then serves it on you.

Seizure in the hands of a third person

Your creditor may decide to carry out a seizure in the hands of a third person to seize:

- your work income;
- cash or investments held at a bank or credit union;
- money owed to you by another person;
- securities (such as shares in a company) that you possess.

Seizure of movable property

Your creditor may decide to seize the seizable portion of your movable property and have it sold under judicial authority. Movable property includes, for example, motor vehicles, collections and paintings.

Seizure of immovable property

If you own land or a building, your creditor may seize it and have it sold under judicial authority to obtain repayment of your debt.

However, if the property is your main residence, it can be seized only if the court has ordered you to pay an amount of \$20,000 or more, unless your debt is for support payments.

Steps in the seizure process

A bailiff may conduct a seizure at your home between 7 a.m. and 9 p.m. However, a seizure may not take place on a holiday. In some cases, the court clerk may allow the bailiff to proceed with a seizure at another time.

Steps in the seizure process for movable property

The bailiff is required to inform you of the contents of the order of execution and demand that you pay your debt. If you pay immediately, the matter will end there. If not, the bailiff will proceed with the seizure and draw up the minutes of seizure, which is a list of the property seized.

Some movable property, however, cannot be seized; this includes the furnishings of your main residence up to a market value of \$7,000 in total, food, fuel, linens and clothing for your family, and the work instruments needed for your professional activity.

Once the minutes of seizure have been drawn up, the bailiff places the property in your custody, which you must accept. If the bailiff has good reason to believe that you will not keep the items until they are sold under judicial authority, he or she may ask the court to have them entrusted to a third person.

The bailiff will then give you a copy of the notice of sale, which states when and where your property will

be sold. You can keep your property by paying off your debt and the costs of the seizure before the date set for the sale. If you cannot do so, the sale may be held 30 days after the publication of a notice of sale in the sales register kept by the Minister of Justice.

Steps in the seizure process for immovable property

A seizure of immovable property is similar to a seizure of movable property. The bailiff is required to inform you of the contents of the notice of execution and demand that you pay your debt. Once the seizure has been completed, the bailiff must give you a copy of the minutes.

The bailiff forwards the documents to the registry office for the area where your immovable property is located. The registrar will note the seizure in the land register and send written notices to anyone with a claim on the property (such as the holder of a hypothec).

As with a seizure of movable property, you are given custody of the seized property, in other words your own building or land, which you cannot sell, give away or damage.

Your property may be auctioned 30 days after the publication of a notice of sale in the sales register kept by the Minister of Justice and in the land register.

Opposing a seizure or sale

You can oppose a seizure or the proposed sale of your property in order to have it annulled, to withdraw specific property from the sale, or to retain a right to revendicate the property.