

Enforcement of Civil Judgments

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Best Resource:

Clerk of Superior Court Procedures Manual, Vol. 1

Enforcement

<u>Prejudgment</u>	<u>Post judgment</u>
<ul style="list-style-type: none">• Attachment• Garnishment• Claim and Delivery	<ul style="list-style-type: none">• Execution<ul style="list-style-type: none">• Claim of Exemptions• Supplemental proceedings• Contempt<ul style="list-style-type: none">• Only for orders<ul style="list-style-type: none">• Specific Performance• Not for money judgments• "Renewal" of judgment

**Prejudgment Procedures:
To Secure Property for Potential Judgment**

- Attachment**
- GS 1-440.1 through 1-440.46
 - An ancillary proceeding
 - Principal action must be filed or about to be filed
 - No attachment after final judgment
 - Order issued by clerk or judge in division where case is filed
 - Order for Sheriff to seize defendant's property to hold until final judgment
 - Requires plaintiff to post bond

Attachment	Defendant is alleged to be...
<p>Case Type</p> <ul style="list-style-type: none"> • Money judgment • Alimony and PSS • Child Support 	<ul style="list-style-type: none"> • A resident who, with intent to defraud creditors or to avoid service <ul style="list-style-type: none"> • Has departed the state or is about to depart, or • Has concealed himself • A person who, with the intent to defraud creditors <ul style="list-style-type: none"> • Has removed property or is about to remove property from the state, or • Has disposed of property or is about to dispose of property • A nonresident • A corporation whose officer cannot be found in state • A foreign corporation

Garnishment

- GS 1-440.21 through 1-440.32
- Ancillary proceeding
 - To be granted only after order of attachment is entered
- Order for Sheriff to seize and hold property owned by defendant but held by third party
 - Summons must issue to third party to join into action

Claim and Delivery

- GS 1-472 through 1-484
- An ancillary proceeding
 - Principal action for recovery of specific property has been filed or is about to be filed
- Order for plaintiff to have immediate possession of property at issue in the principal claim
- Appeals of clerk's order granting or denying garnishment go to judge in division where case pending

Post Judgment Enforcement

Civil Judgments

Money Judgments & Recovery of Property

- Execution
 - Supplemental proceedings
 - Claim of Exemptions

Other Orders

- Contempt
 - Specific Performance

Civil Judgments

- GS 1-302:

- “Where a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by execution, as provided in this Article.”
- “Where it requires the performance of any other act a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuses, he may be punished by the court as for contempt.”

Money Judgment

- Damages awarded for breach of contract are a money judgment enforceable by execution
 - See *Clark v. Bichsel*, 239 NC App 13 (2015)(error for trial court to order that judgment be paid within 60 days)
 - No authority to order a payment schedule
- An order for specific performance is enforceable by contempt

Execution

- Mostly a Clerk of Court and Sheriff Process
- District Court Involvement:
 - Proceedings Supplemental to Execution
 - A discovery process
 - Looking for assets for execution
 - See Clerk's Manual Vol. 1, 36.1 through 36.28
 - Claim of Exemptions
 - If creditor objects to exemptions, hearing is before district court judge

Proceedings Supplemental to Execution

- Examination of Debtor
 - GS 1-352.1 and 1-352.2
 - Clerk considers first
 - Appeal to district court
 - Trial *de novo* in district court
- Discovery Procedures
 - Interrogatories
 - Production of documents
 - Injunctions to prohibit disposition of property
 - Orders to turn over property
- Discovery Orders Enforceable by Contempt
 - Show cause by clerk
 - Hearing by judge

No such thing as “renewing” a judgment

- Party has 10 years to enforce judgment
 - GS 1-234
- Before end of 10 years, party can file a new action on the debt created by the judgment (not a retrial of original debt)
 - Judgment is the evidence of the debt
 - New judgment is for principle and interest owed on original judgment
 - Interest on new judgment is at the legal rate from date of entry of new judgment
- If new judgment entered, plaintiff has a new 10 year period for execution
 - Can only “renew” once
 - GS 1-47(1)
- See blog *On the Civil Side, Action to Renew a Judgment – But not Really*, Feb. 24, 2017, civil.sog.unc.edu
