

CIVIL JUDGMENT AND POST JUDGMENT PROCEDURES

The Defendant failed to answer. What is the procedure for receiving a judgment issued in my favor? (MAG 10)

The time period to file an answer is 30 days. Thereafter the defendant has 15 additional days to open default by filing an answer and paying the court costs to the clerk of court.

If the defendant fails to file an answer, or pay court costs when filing a late answer, the case is said to "be in default." When that occurs, the court can enter a judgment in the case in favor of the plaintiff.

The Court will review the file and determine if the judgment can be entered automatically, without further evidence or hearing, or whether the court is required to schedule the matter for a default judgment hearing to determine the amount of damages to be awarded, if any.

Damages take two forms, liquidated or unliquidated. A judgment can be issued immediately in a properly proved "liquidated damages." The court is required to conduct a default judgment hearing when the damages are "unliquidated" or when a liquidated damages case has not been properly submitted. We will explain, further.

Generally, "liquidated" or fixed damages such as the amount of money owed on an invoice, credit card account, or contract do not require a default judgment hearing IF the plaintiff attached ALL the necessary documents to prove plaintiff(s) case, such as contracts, statements, invoices, for the exact amount claimed. OCGA 9-11-55 (a): Damages are liquidated when they are an amount certain and fixed, either by the act and agreement of the parties, or by operation of law; a sum which cannot be changed by the proof; it is so much or nothing; and that the term does not necessarily refer to a writing.

When damages are liquidated, a judgment "can" be entered immediately IF the Plaintiff attached, at the time of filing, ALL the necessary documents to prove plaintiff(s) case, such as contracts, statements, invoices, for the exact amount claimed. A mere statement by the plaintiff that a certain amount is owed, by itself, is insufficient to avoid a default judgment trial. Plaintiff(s) seeking to avoid default judgment trials need only to attach ALL the legally required documents to prove their case and serve these documents upon the defendant(s).

"Unliquidated damages" are damages which are uncertain, or which require proof in a courtroom. These types of cases must always be set for a default judgment hearing where the plaintiff has to prove to a preponderance of the evidence the amount owed. Examples of "unliquidated damages" would be an automobile collision or defective workmanship cases.

Recapping - When a Default Judgment Hearing is required:
The Court is required to conduct trials in all cases where:

1. The nature of the damages claimed require a trial, such as an automobile collision, defective construction claims and similar cases; or,
2. The amount of money sought was not properly set forth in the legal manner required to prove "liquidated damages."

See "T.A.I. COMPUTER, INC. vs. CLN ENTERPRISES, INC.", 237 Ga. App. 646, 516 S.E.2d 340. The plaintiff shall be required to introduce evidence and establish the amount of (monetary) damages with the right of the defendant to introduce evidence as to money owed. The fact of the default alone does not convert the damages into a liquidated claim. The failure of the Plaintiff(s) to attach, at the time of filing, ALL the necessary documents to prove plaintiff(s) case, such as contracts, statements, invoices, for the exact amount claimed, requires the court to conduct a default judgment trial. A statement by the plaintiff(s) that a certain amount is owed, by itself, is insufficient to avoid a default judgment trial. Plaintiff(s) seeking to avoid default judgment trials need only to attach ALL the legally required documents to prove their case and serve these documents upon the defendant(s).

What is the difference between a dismissal with prejudice and without prejudice? (MAG 25)

A Dismissal with Prejudice means that the claim may never be asserted against other party again. A Dismissal without Prejudice means that the claim may be reasserted against the other party in the future.

What is the basic outline of post-judgment collection procedures? (MAG 25)

- **Writ of Fi Fa:**

A Writ of Fi Fa is a document that is issued by our clerk's office for the purpose of recording a lien on the judgment debtor's property. It is also the legal instrument by which the sheriff of a county may seize the assets of a judgment debtor. A Writ of Fi Fa may be issued on a default judgment case immediately. If the case was contested, then a Writ of Fi Fa may not be issued until 10 days after the date of judgment. The cost for a Writ of Fi Fa is the sum of **\$9.00**. A Writ of Fi Fa may also be used to perfect a lien upon any motor vehicles that the judgment debtor owns. There is a special process to go through in perfecting that judgment lien. Appropriate forms are available to you through the Georgia Department of Revenue, Division of Motor Vehicles. You must send a self addressed envelope, a check for **\$1.00** for each vehicle and a copy of the Fi Fa to: Dept. of Revenue, Motor Vehicle Div., Trinity-Washington Bldg., Atlanta, Ga., 30334.

A Writ of Fi Fa is recorded by our court for you upon the General Execution Docket, which is maintained by the Clerk of Superior Court. If you know of any other real property or seizable assets the judgment debtor owns in other counties, you should apply to the clerks of such counties to have Writ of Fi Fa recorded upon the General Execution Dockets of those counties, as well. When the judgment is paid in full, you as the judgment creditor have the duty to see that the Writ of Fi Fa is cancelled on the appropriate General Execution Docket(s).

There is an additional fee for this service and that matter is handled through the Clerk of Superior Court in the respective counties wherein the Writ of Fi Fa is filed.

- **GARNISHMENTS**

A garnishment is a separate legal action that is filed against the garnishee. The garnishee is a person or business entity that either owes funds to the judgment debtor, or is holding funds on behalf of the judgment debtor. A garnishment could be used against a bank, credit union, employer, general contractor, etc. A garnishment is filed in the county where the garnishee is located. Cost for filing is **\$101.00**.

- **CONTINUING GARNISHMENT**

A continuing garnishment is used when the judgment debtor is a wage earner. It last for a period of 180 days and the appropriate sums will be deducted from the judgment debtor's wages on a 30-day recurring basis until the entire judgment amount is collected, or until the expiration of 180 days from the date of service, whichever event shall first occur. A continuing garnishment is filed in the county where the garnishee is located. Cost for filing is **\$101.00**

- **POST-JUDGMENT INTERROGATORIES**

The purpose of the Post-Judgment Interrogatories is to ascertain what the assets, if any, the judgment debtor has to satisfy this judgment debt. it can be as much as a five step process. Those steps are as follows:

1. Plaintiff files his affidavit and the Interrogatories. They are available in the Clerk's Office of the Magistrate Court. The cost varies according to what time they are filed. If filed within 30 days of the date of judgment, they are filed under the original case number and the cost is **\$10.00**. The Clerk's office will serve the judgment debtor by certified mail with return receipt requested. Service upon the judgment debtor would be by the sheriff.
2. If the Interrogatories are not answered within 30 days, then the judgment creditor must file an Affidavit and Motion to Require Answers to the Interrogatories and the appropriate notice. This is served upon the judgment debtor by certified mail, return receipt requested.
3. If the judgment debtor fails to appear at the hearing, the court may, in appropriate circumstances, issue an Order requiring the judgment debtor to answer the Interrogatories within 10 days. This is served upon the judgment debtor by certified mail, return receipt requested.

4. If there is no response to the Court Order requiring answers to the Interrogatories, then the judgment creditor must file an Affidavit and Motion to Invoke Sanction of Contempt for Defendant's Failure to Answer Interrogatories, plus the appropriate notice. This must be personally served upon the Defendant by the sheriff. Also, a copy of the previous order is served upon the judgment debtor, as well.

5. If the Defendant fails to appear at the hearing, or in the event he does appear and does not have a bona fide reason for not answering the Interrogatories, then the Court may enter an Order for Incarceration. Judgment debtor is then arrested by the sheriff and held in the Walton County Jail until the Interrogatories are answered and approved by the Magistrate. Please note that this is only an overview of the various procedures available to you. You may wish to consult legal counsel if you have difficulties in collecting the judgment lawfully due you. Our office can assist you in filling out the forms hereinabove set forth.

My judgment has been paid, I am the judgment creditor? What do I need to do? (MAG 10)

Duties of Judgment Creditor: Upon payment of the entire debt upon which a judgment or FiFa has been issued, the judgment creditor shall timely (within 60 days) direct the clerk(s) of the appropriate court(s) in writing to:

1. Cancel the writ of FiFa, if a writ was issued;
2. Mark the judgment satisfied.
3. The failure to timely comply may subject the judgment creditor to monetary damages, **O.C.G.A. 9-13-80**.
4. The Writ of Fi.Fa. should be canceled with Clerk of Superior Court in each county where you filed the writ. Also, this form should be submitted to clerk on all judgment and consent judgments upon receipt of full payment.

What is a levy? (MAG 14)

A **levy** is the actual seizure of the property by the sheriff, marshal or other authorized officer. Such a seizure of property may be actual, where the levying officer physically takes the property into his possession; or constructive, where it is impractical for the levying officer to physically take the property; or by recording, where the levy is made upon real property. As with other methods of enforcement of judgment, a levy may not be conducted for a period of ten days following the entry of judgment, except in the case of a default judgment.

In most cases, the levying officer will go to the given location and advise the debtor of his proposed action in an effort either to obtain payment of the judgment from the debtor or convince him to make satisfactory arrangements with the plaintiff or plaintiff's attorney. If neither of the objectives can be accomplished, the officer will determine whether the debtor appears to have possession of and title to property that can be used towards satisfying the judgment. If property cannot be located, the officer will make an

entry of "nulla bona" on the face of the Fi Fa and return it to the plaintiff or plaintiff's attorney. If property can be located, the officer will usually seize it and cause it to be moved to a storage facility until the requisite notice can be given for the next scheduled judicial sale.

What property is subject to a levy? (MAG 14)

Unless specified by statute, all real and personal property of the defendant is subject to levy and sale. This would include intangible personal property such as cash in the defendant's possession.

What are the steps for conducting a levy and sale? (MAG 14)

When proceeding with a levy at the request of the plaintiff, the officer will generally give some notice to the defendant unless the plaintiff requests otherwise. Once the officer has made the levy and seized and stored the property, it must then be advertised for public sale. This advertisement must be published weekly for four weeks preceding the sale. All sales are made on the first Tuesday in each month with the exception of legal holidays. At the sale, the purchaser must pay by cash or cashier's check and will take title at his/her own risk. If the title is found to be defective or there is no title, the purchaser cannot withdraw his bid. However, a sale regularly made by this judicial process will convey title as effectively as if the sale were made by the actual defendant.

Can I have the sheriff levy on land owned by the judgment debtor? (MAG 14)

If the real property has been conveyed as security for a debt, the sheriff cannot levy that property.

If the defendant owns the real property free and clear, the levy on real property is very much like the levy on personal property, with a demand being made by the officer, an advertisement being published and a public sale being conducted.

What is the procedure for having the Sheriff levy upon the property of the judgment debtor? (MAG 14)

The Walton County Sheriff's Department can assist you with collection once you have obtained a Writ of Fi Fa. The fee for this assistance is set by that department.

You should bring your ORIGINAL Fi Fa along with the fee to the Sheriff's Department located at 1425 South Madison Avenue, Monroe, Georgia 30655. Upon receiving the original Fi Fa, a deputy will be dispatched to the address to make a "money demand" upon the defendant, giving the defendant 10 days to pay the Fi Fa in full to the Sheriff's Department. The Sheriff's Department will not accept partial payments. Alternatively, the defendant can pay you, the plaintiff, directly. You have the option of accepting partial payments.

If the defendant fails to satisfy the judgment and make the payments, you may request that the Sheriff's Department levy the defendant's property.

If you request a levy, you as plaintiff take on some responsibilities. First, you must locate and list any personal property of the defendant that is not subject to any prior outstanding lien. You also must be prepared to designate in writing the property you want the Sheriff's Department to levy. It is important not to over-levy the defendant's property because if you do you run the risk of being subject to litigation.

In order for the Sheriff's Department to levy a motor vehicle, you must provide proof that the motor vehicle is not subject to any liens.

- To do this, you should send a self addressed envelope, a check for **\$1.00**, and a copy of your Fi Fa to: ***Georgia Department of Motor Vehicle Safety, Motor Vehicle Services, PO Box 740381 Atlanta, GA 30374.***
- Alternatively, walk in service is available at the ***Georgia Department of Motor Vehicle Safety, Motor Vehicle Services at 1200 Tradeport Blvd., Hapeville, GA 30354*** from **8:30 AM to 3:30 PM Monday-Friday.**

Once you have identified the property you wish to have levied, the Sheriff will hold a sheriff's sale. The dates and times of said sales can be requested from the Sheriff's Department. You, as the Plaintiff, are required to pay for:

- Wrecker and storage (if the levy is on a vehicle)
- Advertisement of the sale
- Levy fee
- Rental of storage space and transport of items (if the levy is on personal property)

After the sale is complete you will be given any proceeds from the sale. It is important to keep in mind that sheriff's sales are frequently not well attended and there is a possibility that the item up for bid will receive less than market value.

SUMMARY OF HOW TO PERFECT A JUDGMENT LIEN OR LEVY UPON JUDGMENT DEBTOR'S AUTOMOBILE & RELEASE OF LIEN

How do I perfect a lien against the judgment debtor's motor vehicle(s), or have the sheriff levy upon the judgment debtor's motor vehicle(s)?

First, you must obtain a Writ of Fi.Fa.. This is a document that is issued by the clerk of court which entered the judgment. It can be used for the purpose of recording a lien on the judgment debtor's property (in this case, their motor vehicle). It is also the legal instrument by which the sheriff of the county may seize the assets of the judgment debtor, including motor vehicles, IF the motor vehicles are owned by the judgment debtor and have no other liens upon the motor vehicle(s),

Where do I obtain a writ of Fi.Fa.?

The clerk's office which issued the original judgment will issue a writ of Fi.Fa. However, the writ of Fi.Fa. must be recorded on the General Execution Docket in Superior Court.

For a default judgment, the writ may be issued immediately, but for a contested case, the writ of Fi.Fa. cannot be issued until 10 days after the date of judgment.

How much does a writ of Fi.Fa. cost?

Currently, a writ of Fi.Fa. costs \$9.00, this includes issue and recording on a General Execution Docket.

Can I record the writ of Fi.Fa. in more than one county?

Yes, you can record the writ. of Fi.Fa. on the General Execution Docket in the Superior Court of any county where you reasonably believe that the judgment debtor may own property or possess assets. You will need to pay the recording fee to each county in which your writ. of Fi.Fa. is recorded.

How can I find out if the judgment debtor owns any motor vehicles in the state of GA?

You can go to <http://www.dmv.state.ga.us/forms/motor.asp> and download any forms you need, including the MV-20 form, which is a search for motor vehicles. You may also go in person to the Georgia Department of Motor Vehicle Safety, Motor Vehicle Services located at 1200 Tradeport Blvd, Hapeville, GA 30354. Be sure to take the original writ of Fi.Fa or a certified copy of your writ of Fi.Fa. with you, if you go in person. You may also request that a MV-20 form be mailed to you. Send a self-addressed envelope, a check for \$1.00 for each vehicle, and a certified copy of your writ of Fi.Fa. to: Georgia Department of Motor Vehicle Safety, Motor Vehicle Services, PO Box 740381, Atlanta, GA 30374.

What information will I get from the MV-20 report?

You will get a list of vehicles owned by the defendant along with any liens on any of the vehicles. The form will also provide any information on boats or boat trailers.

What is the cost for this information?

Currently, this cost is \$1.00 per vehicle IF you search for tag and title information, which is recommended. See the DMVS website to confirm current costs.

What if I don't know how many vehicles the defendant owns?

You should make your best reasonable guess and submit check(s) in the amount of \$1.00 for each vehicle.

To whom should I make my check(s) payable?

Georgia Department of Motor Vehicles

What should I include with my completed MV-20 form?

You must include a certified copy of your writ of Fi.Fa. with the MV-20 form.

Does the name on the Fi.Fa. have to match the name on the MV-20 form?

Yes, it must match EXACTLY or the DMVS will not release any information to you.

If the judgment debtor owns motor vehicles “free and clear” of any other liens, can I levy upon the motor vehicles or put liens on them?

Yes.

#1. You can use your writ of Fi.Fa to have the sheriff levy upon the motor vehicle for sale at public action. Please get with your local sheriff’s department on their procedures to conduct such levies.

#2. If you can’t find the vehicle, or if you don’t wish to ask the sheriff to levy upon the motor vehicle, you can begin process of placing a judgment lien on the vehicle. You can go to <http://www.dmv.state.ga.us/forms/motor.asp> and download any forms you need, including the MV-1 and T-53A forms. Fill out these forms, typewritten, and mail them via registered mail along with \$18.00 and a copy of the writ of Fi.Fa. to the DMVS directly: Georgia Department of Motor Vehicle Safety, Motor Vehicle Services, PO Box 740381, Atlanta, GA 30374.

What else am I required to do if there are no prior liens recorded?

You must send, via registered mail, notice to the owner of record of this lien.

How do I determine if anyone else has a lien against the defendant’s vehicle(s)?

This information is only available from the Georgia Department of Motor Vehicles. Their website is <http://www.dmv.state.ga.us>. To find out if there are any liens against the defendant’s vehicle(s), you must complete form MV-20, “Request for Motor Vehicle Data” and submit it to the Dept. of Motor Vehicles.

There is already a lien on the defendant’s vehicle. What should I do now?

You can go to <http://www.dmv.state.ga.us/forms/motor.asp> and download any forms you need, including the MV-1 and T-53A forms. Fill out these forms, typewritten, and mail them via registered mail along with \$18.00 and a copy of the writ of Fi.Fa. to the listed lien holder.

Do I have to type the MV-1 and T-53A forms?

Yes, you must type them, either on a computer or typewriter.

If there is another lien holder already on the title, what does the lien holder do once I've mailed the lien holder the MV-1 and T-53A forms?

The lien holder is required to forward these forms, together with the original title certificate, to the Department of Revenue, Motor Vehicle Unit. The department will then enter you as a junior lien holder on the title.

I am a judgment lien holder on a defendant's vehicle and the judgment has been satisfied (paid off). What do I do now?

After the judgment has been satisfied, you are required to sign off on the title and send it to the DMVS: Georgia Department of Motor Vehicle Safety, Motor Vehicle Services, PO Box 740381, Atlanta, GA 30374.

What does the DMVS do after they receive the title once the judgment has been paid?

The DMVS will record that the judgment has been satisfied and will delete the lien from the records.

I still have questions after reading these questions and answers. Who can I contact?

If you have any other questions about this process, the DMVS Judgment Lien Department can be reached at (404) 362-6482 OR by mail:

Attention: RESEARCH*
Motor Vehicle Services
P.O. Box 740381
Atlanta, GA 30374-0381

OR email, at <http://www.dmv.state.ga.us/contact/> (go to attached form)

What must a judgment creditor do when the judgment is paid in full?

Duties of judgment creditor: Upon payment of the entire debt upon which a judgment or FiFa has been issued, the judgment creditor shall timely (within 60 days) direct the clerk(s) of the appropriate court(s) in writing to: (1) cancel the writ of FiFa, if a writ was issued; (2) mark the judgment satisfied. Failure to timely comply may subject the judgment creditor to monetary damages, O.C.G.A 9-13-80.

You will be required to pay a nominal court cost to cancel the writ. of Fi.Fa in each clerk of superior court where the writ was recorded. Currently, the statutory fee to cancel the writ is \$5.00.