

DEBT

Law guide – How to recover a debt up to €15,000

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with **William J. Brennan & Co. Solicitors**

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Introduction

The purpose of this guide is to explain the steps involved in recovering a debt of up to €15,000.

The reason for the limit of €15,000 is that this is the maximum amount that a creditor, i.e. the individual or entity owed the money, can recover using the debt recovery process which is managed by the offices of the District Court (for higher amounts the Circuit Court or High Court process would need to be used).

We also cross-reference each step in this guide to the required documents, all of which are available on LawOnline. Debt recovery using the District Court offices is relatively straightforward and LawOnline will guide you through each step.

Requesting payment

The debt recovery process normally begins with a request to the debtor for payment. This may simply require a letter. However, if the letter fails then the next step is to 'serve' a claim notice on the debtor:

- The demand letter: Firstly, the debtor should be sent one or more letters that detail all the facts surrounding the debt and the actions that will be taken if the funds are not repaid immediately. If payment is not forthcoming then a creditor can inform the debtor by letter that legal action may be taken if the money is not repaid within a certain period. Legal action simply means issuing a claim notice (see below). See [Letter before legal action](#).
- The claim notice: This is a document provided by the courts service and can be prepared by the creditor or else by a solicitor on their behalf. Once the claim notice is stamped and dated by a District Court office it can be given to the debtor, i.e. the individual or entity who owes the money and who is referred to as the 'respondent' in the claim notice. The creditor is the 'claimant'. See [Claim notice: debt not exceeding €15,000](#).

Possible scenarios

There are three possible outcomes as a result of serving the claim notice:

1. The debtor pays the outstanding amount or agrees to a mutually acceptable settlement arrangement.
2. The debtor fails to respond or responds but fails to pay.
3. The debtor responds disputing the claim and indicates an intention to defend the matter.

The claim notice informs the debtor that if they fail to respond to it and fail to pay the debt then the creditor is free to apply to the court for a judgment against them. The prospect of a court judgment being registered should hopefully be enough to persuade the debtor to now pay the outstanding money owed.

If not the creditor can then decide whether or not to apply for the judgment. There is no need for the creditor to actually attend court to get a judgment – this application is entirely written and requires a number of documents to be filed at the District Court office.

In the event that the debtor disputes the claim and decides to defend it the matter will need to go to a court hearing if it is to be resolved. In this situation the creditor can decide to go to court or to drop the matter.

Statute of limitations

There are time limits for taking most types of legal action. In general, the time limit for taking action for an outstanding debt is six years. This means that if a creditor does not start legal proceedings within six years of the debt being due, the action is 'statute-barred'. Effectively, this means that, in these circumstances, a debtor cannot be forced to pay the debt.

This limitation is only relevant if the matter proceeds to a court hearing. These limits do not prevent a creditor from attempting to get payment from the debtor outside of a court hearing.

It is very important that care is exercised when determining the limitation period applicable. Once a legal action is commenced the clock stops in terms of the time limit left to take such an action.

Requesting payment

The following are the steps involved in requesting payment of, and taking action to recover, an outstanding debt up to the value of €15,000. Each step is cross-referenced to the required documents, both of which are available on LawOnline.

A. The demand letter

The obvious first step in any recovery is to request payment by letter or a series of letters – see, as an example, [Debt collection letters for an outstanding invoice](#). Should the matter end up in a court hearing it would also be supportive of a creditor's case to have sent such a letter though there is no legal requirement to do so. Typically a final letter is sent giving the debtor seven days to pay before the next step is taken which is to start legal proceedings.

B. Identify the relevant District Court office

There are two bases on which the creditor can choose which District Court office to use:

1. where the defendant, i.e. the debtor, is located, or
2. where the transaction giving rise to the debt took place

The location of the debtor is often used given that this location is less likely to be disputed should the matter go to court hearing.

C. Preparation of the claim notice

To 'start legal proceedings' basically means the process of preparing and giving a claim notice to the debtor – see [Claim notice: debt not exceeding €15,000](#). Once the claim notice is drafted and signed it must be filed with a District Court office so that it can be issued.

D. Issuing the claim notice

Three copies, including the original signed version are given to the court office, where they are stamped, dated and a reference number is assigned called the record number. This process is referred to as issuing the claim notice. The office keeps the original signed version and returns the other two copies to the creditor.

E. Serving the claim notice on the debtor

A stamped and dated copy of the claim notice must now be given to the debtor – this is referred to as 'serving' or 'service of' the claim notice. This can be done via the postal system or be delivered in person. In the case of a company debtor it is acceptable to send it to the registered office by ordinary post. In the case of an individual registered post should be used or else it should be delivered by hand.

If, after following the above steps, a settlement is reached with debtor then the matter is ended.

Applying for judgment

If the debtor fails to respond to the claim notice not later than 28 days after receiving it, or replies without an intention to defend the claim but also fails to pay the outstanding amount, it is then open to the creditor to apply to the District Court for a judgment against the debtor.

The following are the steps involved.

A. Confirmation of service of the claim notice

The court office requires confirmation that the debtor actually received the claim notice. The details of how and where service of the claim notice was carried out are provided in the Statutory declaration of service document. This document must be signed in the presence of a commissioner for oaths or a practising solicitor – what is called ‘swearing’ the document. Most solicitors’ firms provide this service at a cost of around €10.

B. Confirmation of the debt remaining outstanding

The court office also requires confirmation of the amount of the debt still outstanding. The Affidavit of debt document is used to provide this information, taking account of any part payments that the debtor may have made, and including any interest and recovery costs as appropriate. The affidavit of debt can only be prepared once 28 days have elapsed since the claim notice was served on the debtor. This document must also be signed in the presence of a commissioner for oaths or a practising solicitor.

C. Preparation of judgment document for use by the court

This document - Judgment (decree) by default - is essentially the application for the judgment against the debtor for the total amount still outstanding. While it is signed by an officer of the court it must be drafted and provided by the creditor to the court office.

D. Filing of documents with the court office

The above three documents have to be filed at the District Court office. These documents and the claim notice together make up, what is called, the judgment set.

E. Issue of judgment by the court office

These documents are checked and, if all are in order, the District Court issues the judgment for the amount owed plus the costs involved in the proceedings. Having obtained the judgment, the creditor is entitled to enforce the judgment (see ‘Enforcing a judgment’ below). Interest at a rate of 8% per annum begins to accrue on the amount of the judgment from the day the judgment is given. A judgment where the debtor does not defend the claim is referred to as a summary judgment.

If the Debtor decides to defend the claim

Every debtor has a right to defend a claim notice served on them. If this is their intention then the debtor is required, within 28 days of having received the claim notice, to notify the creditor, or their solicitor if legally represented, by providing what is called their 'defence'.

The creditor, or their solicitor, will then need to review this document and reply to the debtor on any points if necessary. Once replies to any queries have been furnished, either party can apply to arrange the court hearing.

On the hearing date itself, both parties will be required to give evidence and then the creditor will be required to prove their case. For this reason, a creditor should always be satisfied that the claim being made is provable. Examples of the types of evidence of the debt required are order forms, invoices, delivery dockets signed by the debtor etc.

Before making a claim in court, however, it is important for a creditor to remember that:

- If the case fails and the court rules against the creditor, they could be liable for the debtor's costs as well as their own.
- A court is unlikely to make a ruling in the creditor's favour if the creditor cannot prove the facts of the case.
- If the debtor has filed for bankruptcy or has gone into liquidation, the debt will be more difficult to recover.

LawOnline debt recovery documents

The following are the relevant debt recovery documents available on LawOnline.

Letter before legal action following earlier correspondence (DR010)

This is a letter that can be sent to the debtor when the creditor has decided to issue a claim notice and thus start the legal recovery process. There are other similar letters available on LawOnline which can also be used depending on the circumstances.

Claim notice: debt claim not exceeding €15,000 (DR016)

This document sets out the details of the claim including the amount owed. A business creditor owed money by another business can also include interest and any recovery costs incurred. Interest can also be included if it part of the terms of business or was a contractual condition of the transaction giving rise to the debt.

Statutory declaration of service (DR017)

The purpose of this document is to confirm to the court office that the claim notice above was correctly and successfully served on the debtor. The details of how and when service was carried out are required. This document must be signed in the presence of a commissioner for oaths or a practising solicitor.

Affidavit of debt (DR018)

This document is required to confirm to the court office the remaining debt amount still outstanding, taking account of any payments that the debtor may have made, and including any interest and recovery costs as appropriate. This document must be signed in the presence of a commissioner for oaths or a practising solicitor.

Judgment (decree) by default (DR019)

This document is essentially the application for the judgment against the debtor for the total amount claimed. While this is signed by a court officer it has to be prepared by the creditor. Once signed by the County Registrar the creditor can then enforce this judgment (see the chapter on 'Enforcing a judgment').

Also all of the four above documents, i.e. excluding the letter, can be purchased together – see [District Court claim document pack](#).

Enforcing a judgment

When judgment is obtained and the debtor still refuses to pay the outstanding debt, there are several methods of enforcement possible which may be initiated at any time within twelve years of the judgment. Some enforcement methods are only available against individual debtors, including sole traders, while others are only used against companies. The choice of enforcement option should ideally be based on the debtor's specific circumstances.

Companies and individuals (including sole traders)

The following methods can be used to enforce a debt judgement against either a corporate entity, i.e. a company, or individuals including sole traders:

- a) **Publication:** A judgment can be registered in the Central Office of the High Court. This leads to the publication of the debtor's name and the amount owed in trade gazettes. This could affect a debtor's credit rating;
- b) **Execution by Sheriff:** A creditor can lodge the judgment order with the Sheriff in the area where the debtor lives or conducts business, thus requesting the Sheriff to seize goods and to sell them for the purpose of raising money to satisfy the debt. Other enforcement options may require the court being satisfied that the Sheriff has been unable to execute the judgment in this way. Where it is not viable to seize goods, the Sheriff will often enter into instalment arrangements with debtors or seek a lump sum;
- c) **Judgment mortgages:** A judgment mortgage can be registered when there is a judgment against a debtor owning land or property. When a judgment is registered as a mortgage, it results in two main consequences:
 - a. The debtor cannot sell the lands or property until the mortgage is discharged;
 - b. The creditor can enforce the judgment mortgage by seeking a court order to sell the property and settle the debt.
- d) **Garnishee orders:** Where a third party owes money to the debtor, the court can make a further order directing the third party to pay the sums due directly to the creditor.
- e) **Receiver by way of equitable execution:** Where money is due to be paid to the debtor at certain future dates e.g. rent, a court may appoint an independent person to receive the money payable to the debtor and pay the creditor.
- f) **Injunctions:** An injunction is a court order directing a party to do or to refrain from doing something. A court judgment is not necessary to apply for an injunction which can be sought by a creditor in the following circumstances:
 - a. to prevent a debtor from disposing of or reducing assets below a certain value to avoid paying a debt
 - b. to prevent the debtor leaving the jurisdiction

- c. to prevent destruction or removal of evidence and used also to force the debtor to disclose the whereabouts of specific documents or items

Companies only

Judgment enforcement methods specific to corporate entities are as follows:

- a) **Examination of directors:** Officers of the company can be examined before the court to assist in discovery and execution of the judgment. Any officer may be examined as to the assets of the company;
- b) **Liquidation:** When a company is unable to pay its debts it is insolvent and a number of events may follow including voluntary or compulsory liquidation. The process of liquidation involves the sale or collection of all assets and distribution of any net proceeds (after deduction all costs) to creditors in order of priority, followed by the dissolution of the company.

Individuals (including sole traders) only

Judgment enforcement methods specific to individuals, including sole traders, are as follows:

- a) **Examination order:** A debtor is served with a summons requiring the completion of a statement of means and to attend court to be cross examined. At the examination hearing, a Judge can make an instalment order (see below). If the debtor refuses to attend court, the judge may award an instalment order in his or her absence.
- b) **Instalment order:** An instalment order compels a debtor to repay by instalments the amount of the debt and legal costs which are due. If the debtor fails to comply with the order, then a committal order (see below) can be sought from the court.
- c) **Committal order:** This is an order which directs that the debtor be arrested and committed to prison for contempt of court for failure to comply with the terms of an instalment order. Typically, to secure such an order, the creditor would need to show that the debtor will not, as opposed to cannot, pay;
- d) **Bankruptcy order:** Bankruptcy is a legal process for the benefit of creditors where the debtor is unable or unwilling to discharge his debts. To begin this enforcement action, the debtor must have committed an act of bankruptcy (e.g. a judgment returned by the Sheriff marked "No Goods/Nulla Bona" is an act of bankruptcy). Where a debtor is adjudicated a bankrupt by the High Court, the property of the debtor becomes vested in the Official Assignee (an officer of the High Court). The result is that the bankrupt loses his/her capacity to deal with the property. The debtor's property is then sold for the benefit of the creditors. Given the maximum debt amount handled by the District Court this unlikely to be an economically feasible route.

