

WRIT OF EXECUTION TO THE UNITED STATES MARSHAL

Applicable Law and Rules

1. Fed. R. Civ. P. 69, made applicable by Fed. R. Bankr. P. 7069 and 9014, provides that "Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise."
2. 28 U.S.C. § 566(c) provides in part, that "the United States Marshal Service shall execute all lawful writs, process, and orders issued under authority of the United States, and shall command all necessary assistance to execute its duties."
3. A judgment creditor (the person on whose behalf the judgment is entered) thus may elect to enforce that judgment by obtaining a writ of execution from the Bankruptcy Court, and having that writ executed by the United States Marshal. Upon receipt of the writ, the Marshal will make a demand for payment of the judgment amount. If no payment is made, the Marshal is authorized to seize the assets of the judgment debtor (the person against whom the judgment is entered) and sell those assets. The proceeds of the sale then are used to pay the judgment creditor the amount due on the judgment.
4. The fees of the United States Marshal for executing the writ and for conducting a sale of assets, if any, are fixed by 28 U.S.C. § 1921. If the judgment provides for costs to be paid by the judgment debtor, then the Marshal will add the fees to the amount to be collected. If the judgment does not provide for costs, the judgment creditor must pay the Marshal prior to execution of the writ. See Fed. R. Bankr. P. 7054 and the instructions to Form B 263 for further information regarding the awarding of costs in a judgment of the Bankruptcy Court.
5. Interest on money judgments entered in bankruptcy cases is governed by 28 U.S.C. § 1961. Execution for the interest may be levied by the United States Marshal if permitted by state law, see 28 U.S.C. § 1961.
6. 28 U.S.C. § 1961(a) provides that "such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment."
7. Pursuant to 28 U.S.C. § 1961(b), such interest is computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b) and compounded annually.
8. If the judgment is to be enforced in another district, it is necessary to register the judgment in the other district. This is done by filing a copy of the judgment and Form B 265, Certification of Judgment for Registration in Another District, and the payment of the fee mandated by the Judicial Conference pursuant to 28 U.S.C. § 1930. As of July 1, 1999, the certification fee was \$5 and the registration fee was \$20.

9. 28 U.S.C. § 1963 provides that "A judgment in an action for the recovery of money or property entered in any . . . bankruptcy court . . . may be registered by filing a certified copy of the judgment in any other district . . . when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner." Form B 265 provides a means for the clerk to make the recitations required by 28 U.S.C. § 1963.

Instructions

1. To obtain a writ of execution from the Bankruptcy Court, a party must first obtain a certified copy of the judgment from the clerk of the court. This copy must be attached to Form B 264 and submitted to the clerk. The clerk will issue the writ and give the original of the writ, with the certified copy of the judgment, to the party requesting the writ.
2. The clerk will keep one copy of the writ and judgment for the court files. The original writ and the certified copy of the judgment must be submitted to the United States Marshal, together with one copy of each document. A fourth copy should be kept for the judgment creditor's files.
3. The papers submitted to the Marshal must be accompanied by a completed Form USM-285. This form should be obtained directly from the Marshal's office.
4. Generally, the writ of execution must be issued by a court in the district in which the judgment debtor resides or in which the property to be levied upon is located. Before the court can issue a writ on a judgment entered by another court, the "foreign" judgment must be registered in the court. The judgment can be registered pursuant to 28 U.S.C. § 1963 by using Form B 265, Certification of Judgment for Registration in Another District, and payment of the fees prescribed by the Judicial Conference pursuant to 28 U.S.C. § 1930.
5. Usually, the judgment may be registered either in the district court in the other district, in the bankruptcy court there pursuant to the order of reference for bankruptcy cases and matters, or in both courts. In the states which require that judgments be registered in a "court of general jurisdiction" or with the "clerk of the United States District Court," the judgment should be registered in the district court.
6. Once the judgment has been registered in the other district, the writ of execution can be issued by the court in which it has been registered.
7. Some judgment creditors may prefer to have their judgment executed upon by local officials, such as a Sheriff or City Marshal, rather than by the United States Marshal. In that event, the bankruptcy court judgment should be registered with the county clerk for the county in which the judgment debtor resides. This may be done using Form B 265, Certification of Judgment for Registration in Another District. The Writ of Execution, Form B 264 should NOT be used, as the bankruptcy court has no authority to issue a writ to a state or local official.

Caption

1. Identify the Judicial District in which the bankruptcy case was filed. Example: "Eastern District of California."
2. "In re": Insert the name of the debtor as it appears in the bankruptcy petition. Then insert the names of the plaintiff(s) and defendant(s) as they appear on the original complaint.
3. "Case No.": Insert the bankruptcy case number assigned by the court at the time of filing.
4. "Adv. Proc. No.": Insert the number assigned by the court to the adversary case at the time of the filing of the complaint.

Boxes

1. State the name and address of the judgment creditor. The judgment creditor is the party in whose favor the judgment was entered.
2. State the name and address of the judgment debtor. The judgment debtor is the party against whom the judgment is entered.

Other Information

1. The "Amount of the Judgment" is the total amount due under the judgment including any costs allowed by the court pursuant to Fed. R. Bankr. P. 7054(b). This amount does not include any interest due after the judgment was entered on the docket.
2. "Other Costs" will be completed by the clerk. This may include any fee for photocopies and certification of the judgment, unless these fees were included in "Amount of Judgment."
3. "Date of Entry of Judgment" is the date the judgment was entered on the court docket. The rate of interest on the judgment is determined by the date of the entry. The Administrative Office distributes information on the legal rate of interest, changes in the rate, and the effective date of the changes. The clerk should maintain a record of this information, which also is set out as a note to 28 U.S.C. § 1961 in many copies of title 28.
4. "To the United States Marshal": Identify the Judicial District in which the writ is to be executed.