



Third Party Debt Notices

Information for third party debtors
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

- What to do if you have been named as a third party debtor in Family Court proceedings.
- Your rights.
- Your responsibilities.
- What will happen if you don't comply with the Notice.

What is a third party debtor?

When a person ('the applicant/payee') is owed money by another person ('the respondent/payer') under a court order or child support liability they can ask the Family Court to enforce that debt.

One of the methods of enforcement is a Third Party Debt Notice (Form 17). The Court will direct that a third party is to pay money owed to the respondent to the applicant instead.

Typically, the third party is an employer of the payer or a bank or building society where the payer has money in an account.

This brochure must be served on the third party named in a Third Party Debt Notice (Form 17) at the same time as the Notice.

The *Family Court Act*, the *Family Law Rules*, the forms and the brochures referred to in this brochure can be obtained from the Family Court of Western Australia website www.familycourt.wa.gov.au. The forms and brochures can also be obtained from the registry of the Court.

Your responsibilities as a third party debtor

You should have received this brochure at the same time as the Third Party Debt Notice was served on you.

When served with a Third Party Debt Notice (Form 17), any money that you owe to the payer is affected (attached) by the Notice. This could be:

- **money payable by an employer** (the third party debtor) to the payer, including wages, fees, bonuses, commissions, overtime pay or other money payable in addition to or in lieu of wages, a pension, annuity, vested superannuation money, money payable in lieu of leave, or retirement benefit due or accruing to the payer;
- **money in an account with a financial institution** (the third party debtor); or
- **any other sum of money** that you (as the third party debtor) owe the payer on the date the enforcement order is served on you.

You must not pay the money affected by the Notice to anyone other than the payee in compliance with the Notice.

How long does the Notice last?

The Notice remains in place until:

- the total amount specified in the Notice is paid;
- the Notice is set aside or it expires;
- payment of all or part of a debt by you discharges the debt between you and the payer to the extent of the payment.

Employers who are third party debtors

Each time a deduction is made under the Third Party Debt Notice, you must give your employee (the payer) a written notice, stating:

- the amount paid to the payee; and
- the total deductions made from the payer's earnings.

Where a Third Party Debt Notice is in force and the payer leaves your employment, you must, within 21 days of the employment ceasing, advise the Court in writing of the date on which the employment ceased.

Employers also have special obligations not to treat their employees unfairly if a Third Party Debt notice is made.

Your rights as a third party debtor

A third party debtor may apply to the Court (Rule 20.37):

- to dispute liability under the Third Party Debt Notice;
- for procedural orders about the Notice; or
- to vary the terms of the Notice.

You do this by filing:

- an Application in a Case (Form 2); and
- an affidavit stating the facts and circumstances relied upon.

You must serve a copy of the Form 2 and the Affidavit on the payee and the payer. For information on service, read the Court's "Service Kit", available from the Court's website or your nearest Court registry.

When the Court hears your application, it may make orders including:

- an order staying (delaying) the enforcement of the Third Party Debt Notice;
- an order that a party produce further information or evidence;
- the dismissal of the application;
- the variation, suspension or dismissal of the Third Party Debt Notice;
- an order that any money that has been paid out in error to the payee be paid into and held in Court, returned to the third party debtor or sent to the payer or a co-owner of the debt;
- if the third party debtor has not paid what was required to be paid, an order that the third party debtor pay all or part of what was required; or
- a costs order.

The Court will not investigate the original order (the money owed by the respondent to the applicant) or agreement being enforced.

Claim by affected person

An affected person is someone who is not the third party debtor, but has an interest in the debt that the third party debtor owes.

A person who claims to have an interest in the debt subject to the Third Party Debt Notice may also apply for an order to determine that claim.

Failure to comply

A third party debtor must:

- comply with the Third Party Debt Notice or an order varying, suspending or discharging it; and
- not unfairly treat a payer in respect of employment because of a Third Party Debt Notice or an order made under Chapter 20 of the Family Law Rules.

Failing to comply may place you in contempt of court; you could face a fine of up to \$5500.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court.

You can get legal advice from a:

- Legal Aid Office;
- Community Legal Centre; or
- Private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Personal safety

If you have any concerns about your safety while attending court, please call 08 9224 8222 before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place. By law, people must inform a court if there is an existing or pending family violence order involving themselves or their children.

Need more information?

For more information about Family Dispute Resolution, or to find your nearest Family Relationship Centre:

- go to www.familyrelationships.gov.au; or
- call the Family Relationship Advice Line on 1800 050 321, the line is open from 8:00am to 8:00pm Monday to Friday, and 10am to 4pm on Saturdays.

For more information about the Family Court of Western Australia, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au;
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of Western Australia registry.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of Western Australia**
www.communitylaw.net
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Service of Western Australia Family Law Unit**
www.als.org.au
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**
www.familylawsection.org.au
02 6246 3788

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice.

The Family Court of WA respects your right to privacy and the security of your information.

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