CIVIL AND DELICTUAL CLAIMS

Emoluments Attachment Orders

Get an overview of the process involved surrounding emoluments attachment orders and garnishee orders in South Africa via this QuickLaw guide.

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For all your Emoluments Attachment Order answers, simply follow our guide below:

1. What is an Emoluments Attachment Order (“EAO”)?
2. What is a Garnishee Order (“GO”)?
3. How is an EAO obtained?
4. What can the employer do after receiving a copy of an EAO?
5. Can an EAO be cancelled, amended or suspended?
6. What happens when the debtor leaves the service of his/her employer?
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1. What is an Emoluments Attachment Order (“EAO”)?

- Once a person (“creditor”) has obtained judgment against another person (“debtor”) for the payment of money (“debt”), s/he can enforce such a judgment in various ways. For example, if the debtor fails to pay money in terms of a judgment, the creditor may apply for an EAO or a Garnishee Order (“GO”)
- An EAO is an order made by a Magistrate’s Court (“court”), whereby the creditor attaches a portion of the debtor’s income (salary). The debtor’s employer will deduct an amount from the debtor’s income and directly pay it to the creditor.
- For example: if a debtor is required in terms of a court order to make payment in the amount of R5000 per month to his ex-wife for maintenance, but fails to do so, his ex-wife may apply to court for an EAO. In terms of the EAO, the debtor’s employer must deduct R5 000 per month from the

debtor’s salary and pay it directly to his ex-wife.

- The instalment amount or the total of all the instalments if there are more than one EAO, may not be more than 25% of the debtor’s basic salary.

2. What is a Garnishee Order (“GO”)?

- A GO is an order made by a court, whereby the creditor attaches a portion of a debt owed to the debtor by a third party (“garnishee”). The garnishee will deduct part of the debt or pay all of the debt, due to the debtor, directly to the creditor.
- A GO may be issued against *any* third party for the attachment of *any* debt owing to the debtor and not limited to one type of debt or one type of third party, for example, the income received from a debtor’s employer like with an EAO.
- For example: if a debtor is required in terms of a court order to make payment in the amount of R5000 per month to his ex-wife for maintenance, but fails to do so, his ex-wife may apply to court for a GO. In terms of the GO the debtor’s lessee (tenant) must deduct R5000 per month from the rent due to the debtor (lessor or owner) and pay it directly to the debtor’s ex-wife.

3. How is an EAO obtained?

- A creditor must apply to a court in the area where the debtor resides, carries on business, or is employed.
- An application must be made in the prescribed form and be accompanied by:
    - written consent by the debtor of the EAO being granted; or
    - a registered letter to the debtor at his/her last known address setting out the amount of the outstanding debt (including costs), and a warning that an EAO may be issued if the outstanding amount is not paid within ten days of the posting date of the letter; and
    - an affidavit setting out the amount of the debt at the date of the EAO, the costs that have accumulated, payments received, and the outstanding balance.
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    - In both of the instances mentioned above, a court will only grant an EAO if it is satisfied that such an order will be just and equitable and that the amount is appropriate. This means that an EAO cannot be granted by a clerk of the court.

4. What can the employer do after receiving a copy of an EAO?

- The EAO will be served on the employer, after which the employer:
    - must treat the EAO as if it is a judgment against itself;
    - must deduct the specific amount from the debtor's salary and pay it to the creditor;
    - may dispute the correctness or validity of the EAO with the creditor (the debtor may also exercise a right to dispute the EAO);
    - may request from the creditor a free copy of a statement containing particulars of the payments received and the balance owing (however, the judgment creditor has a duty to provide a quarterly statement free of charge); and
    - may deduct commission of up to 5% on the amounts deducted from the debtor's salary.

- An employer who dismisses an employee due to the issuance of an EAO is guilty of an offence and liable to a maximum fine of R300 or three months' imprisonment.

5. Can an EAO be cancelled, amended or suspended?

- A court may on good cause shown, cancel (rescind), amend or suspend an EAO.
- If a debtor cannot maintain him/herself or his/her dependants after an EAO has been issued, the court may cancel the EAO or amend it in such a manner that the debtor, and his/her dependents, will have sufficient means to survive.

6. What happens when the debtor leaves the service of his/her employer?

- The debtor must immediately advise the creditor, in writing, of the name and address of his/her new employer.
- The creditor must serve a certified copy of the EAO on the debtor's new employer, with an affidavit specifying the payments received since the EAO was issued, the costs incurred and the outstanding balance.
- The old employer will be relieved of its payment obligations and the new employer is now bound to the EAO.
- If the debtor becomes self-employed, s/he must still comply with the EAO.

7. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services

page or visit our join now page.

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