

1. Regulating conditions for the appointment, fees and certificates granted to bailiff;
2. Regulating the security (if any) to be required from bailiff and the fees (if any) payable by them;
3. Regulating seizure and sale;
4. Regulating the forms, fees, charges and expenses of and incidental to distress generally for the better carrying out of the purposes and provisions of Distress for Rent Act Cap 36.

Complaining about Bailiffs?

A bailiff is not supposed to act unlawfully. He is supposed to gain entry through peaceful means only. If the bailiff breaks in forcefully, takes away things by force, damage your belongings, or take away more than what is required to pay off your debts, you can write and complain to the legal authorities who have appointed them such as the Magistrates Court Registry/ Chief Registrar's Office. Complaints can also be lodged at the Consumer Council of Fiji which will be sent to the Magistrates Court and/or Chief Registrar for action.

What happens if a Bailiff does not hold an Authorized Certificate?

Any person who acts as a bailiff or pretends to hold a certificate of a Bailiff and levies a distress for rent is guilty of an offence and upon conviction is liable for a maximum penalty of \$100 or maximum imprisonment for 3 months (Sentencing and Penalties Decree 2009).

Terms you should know

Bailiff - Somebody legally authorized to recover specific debts by taking goods and property of the same value and selling them.

Bailiffs Certificate - This is a Certificate that is given to the bailiff once a magistrate/judge is satisfied that the bailiff is a "fit and proper" person. The Certificate resembles a photographic identity card, but will be personally signed by the magistrate/judge and is stamped with a court seal.

Creditor - The company or body you owe money to.

Judgment Debtor Summons - Where a judgment or order of a Court is for the recovery or payment of money, whether by

installments or otherwise, the party entitled to enforce it (hereinafter called the judgment creditor) may, subject to such rules as may be prescribed, summon the judgment debtor, or if the judgment debtor is a corporation, an officer of that corporation, to be orally examined before that Court respecting the judgment debtor's ability to pay or satisfy the judgment debt and for the discovery of property applicable to such payment and as to the disposal which the judgment debtor has made of such property. If the judgment debtor fails to pay in accordance with the terms of the Order of Court, a Judgment Notice can be issued against him or her which would require him to explain why he or she fails to comply with the Order of the Court and to show cause why he or she should not be sent to prison for failing to comply with the Order of the Court.

Liability Order - A court order that gives the powers to involve bailiffs, deduct money from your benefits or earnings, or begin bankruptcy proceedings etc. It confirms who is responsible for the debt, how much it is, what costs have been awarded.

Walking Possession Agreement - This is the payment agreement you may make if bailiffs have entered your home. It enables you to keep your belongings if you keep to the new payment arrangement. If you do not, the bailiff can return, force entry into your home, and take the stuff on the list.

Distress & Dstraint - These terms mean the same, and refer to the process of removing or threatening to remove goods in order to enforce a debt.

Warrant of Execution/Writ of Execution - This is used to refer to any process of seeking to compel payment of a debt by the use of a legal remedy. Its a method of enforcement which authorizes the certificated Bailiff to sell sufficient goods of yours to pay for the debt that he is instructed to enforce together with his fees for doing so.

Seizure - This refers to the process of identifying goods which can be taken to redeem the debt.

Warrant Expiry - A warrant has a "life" of just 12 months from the date of issue. It cannot be enforced beyond that date. You must insist on seeing a copy of the warrant.

Writ of FIFA - Fieri facias is a Latin term that refers to a writ of execution directing a bailiff to take goods or property of someone against whom a judgment has been rendered. It is often abbreviated as fi. fa.



CONSUMER COUNCIL OF FIJI

Suva Head Office

4 Carnarvon Street
Private Mail Bag
Tel: 330 0792
Fax: 330 0115

Email: complaints@consumersfiji.org

Lautoka Office

Suit 4, Popular Building, Vidilo Street
P O Box 5396
Tel: 666 4987
Fax: 665 2846

Email: consumerltk@connect.com.fj

Labasa Office

1st Floor FNPF Building, Rosawa Street

P O Box 64
Tel: 881 2559
Fax: 881 2559
Email: colbs@connect.com.fj

www.consumersfiji.org

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Dealing with Bailiffs



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INTRODUCTION

If you owe someone money, a bailiff may be asked to recover the debt. You need to know how to deal with Bailiffs if they contact or visit you, and what your rights and obligations are.

Who is a Bailiff?

A bailiff is a person appointed by the court to collect debt from the defaulters. Bailiffs have the authority to seize your belongings if only **ordered by the court**. These unpaid debts can include arrears from credit companies such as the Hire Purchase Companies, unpaid income taxes, rent owed, unpaid child maintenance or court fines, Writ of FIFA, Judgment Debtor Summons etc.

What “Legal Authority” must a Bailiff have?

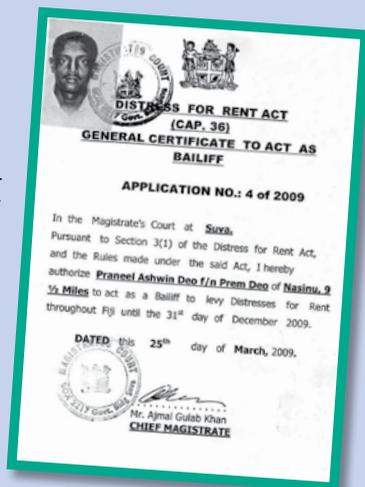
Bailiffs practicing in Fiji need to have a certificate from the court. Certificates granted can either be a general or special certificate. A **General Certificate** authorizes the Bailiff to recover unpaid rent from tenants residing in Fiji. This certificate will state the date of termination. A **Special Certificate** is only for a particular distress or distresses. For example, a distress for rent on property which authorizes Bailiffs to have tenants removed from their property for unpaid rents.

A bailiff must be legally authorized to collect the debt on behalf of the creditor. The authority is normally known as a “warrant”, or “warrant of execution/writ of execution” if the bailiff is recovering money owed under court judgment or order.

Bailiffs used by the court to collect debt will be acting on either a “distress warrant” or a “liability order” issued by the courts.

How do I know the person at my door is a Bailiff?

Bailiffs should provide identification or authorization if you ask them to. You can also request for the court order and the bailiff’s certificate or license which will carry termination date. A Court Order is a document that will have a stamp of the court giving orders with details such as what is the order for and what the bailiff is required to do. If uncertain, consumers can seek further clarification from the organization that has authorized or sent the Bailiff or the Magistrates Court Registry or the Chief Registrar’s Office.



Do Bailiffs have power to enter my house?

Bailiffs do not have the right to force their way into your home to seize your goods. They only have a right to “peaceful entry”. This means that they cannot use force to enter your home, for example, by breaking a window or a door. However, they can enter your property through an open door or window (front and back) and can climb over fences and gates, but cannot break them down.

You do not have to let a bailiff into your house. If all your doors and windows are securely closed they will not be able to gain peaceful entry to your house unless you let them in.

Bailiffs are well aware of their limited powers and may use a variety of different means to gain entry. They may attempt to walk in as soon as a door is opened. They may ask if they can use your telephone to check if an arrangement is satisfactory with their office. They can simply ask you if you would prefer to discuss matters inside. You do not have to go along with any of these tactics. (You are still the owner of the house!!)

Can I be arrested or imprisoned for not letting a Bailiff into my house?

Bailiff’s order to recover debts does not have the power to have you arrested or imprisonment. However, if there is a court order, then it is advisable that you should respect and follow this court

order because failure to do so would be deemed as a contempt of court and you can be charged and taken to court.

If a Bailiff does gain peaceful entry to my house. What will they do?

Once in the house, a bailiff will attempt to seize your goods in order to sell them off at public auction to raise money to pay the debt you owe. The bailiff will make clear any intention to seize various items, either verbally, or by attaching a mark to the items or by touching them. This is sometimes called levying distress or distraining upon goods.

Once the bailiff has seized goods, they have a number of options. They can either remove items they have seized immediately from the property to be stored and eventually sold at public auction or they can leave someone on the premises to guard the items that have been seized or, in the case of bailiffs collecting rent, secure items that have been seized in your home. These last two options are very rarely used.

The most likely outcome is that the bailiff will ask you to sign a “walking possession agreement”.

Once in the house the bailiff has the right to go into all rooms and can break open any locked door or cupboard inside your house. If the bailiff gains peaceful entry he/she has the right to call again and enter even without your permission, i.e. he/she can break in and remove your goods.

Any attempt to remove a bailiff from your property once they have gained peaceful entry can be considered as assault and you could be charged for criminal offence and taken to court for it.

What is a Walking Possession Agreement?

A walking possession agreement means that the goods that have been seized now legally belong to the bailiff and can be removed at any time. However he/she will allow them to remain in your home and you can continue to use them provided you keep your side of the agreement. e.g. you make agreed payments.

In order for a walking possession agreement order to be valid, a bailiff should have gained peaceful entry to the property and seize the goods. It is not enough for a bailiff to list items that they have seen through a window and push a walking possession order through the letterbox for you to sign and return. You should never sign a walking possession order in these circumstances.

A bailiff must only seize goods that belong to the person who owes the money, although any goods in the house can be seized for distress or rent. In practice, many bailiffs will attempt to seize any goods of value at a house they visit – it will be up to the individual to prove ownership afterwards. If you have receipts showing someone else bought the goods then you should show the bailiff these.

...And what can’t the Bailiff seize?

There are some general exceptions to what a Bailiff can take. They cannot take items such as clothing, bedding, furniture, household equipment or provisions as are necessary for satisfying the basic domestic needs of the debtor and his/her family and such tools, books vehicles, and other items of employment as are necessary to the debtor for use personally in their employment, business and vocation.

The bailiff is not normally able to seize:

- Items which belongs to someone else
- Rented items
- Goods on hire purchase or conditional sale agreements
- Fixtures and fittings

Can I hide my goods?

The law is silent on this, which basically means, that consumer could hide goods which he/she does not want the bailiff to possess/seize. However, if there is court order and the consumer tries to hide his/her goods, then they could be charged for contempt of court.

When can a Bailiff Not levy a distress?

Bailiffs cannot visit your home between sunset and sunrise or on any Sunday, Good Friday or Christmas Day.

Do I have to pay a fee to Bailiffs?

If a creditor sends a bailiff to your house to recover a debt, the total charge comprising his visit, the cost of seizing and transporting, auctioning and so on will be induced on you.

What powers does the Chief Justice have in administering Bailiffs?

The Chief Justice has the power to make rules in following ways:

