



Attachments of TANGIBLE MOVABLE PROPERTY

Citizen E-note

An attachment of movable property may be classified in two ways:

- a precautionary attachment and an attachment of movable property in execution of a judgment (for a general explanation, reference is made to E-Note 1)
- the attachment of tangible movable property and the attachment of intangible personal property

This contribution will cover the attachment of tangible property.

• The property of tangible movable property

1. CONDITION: OWNERSHIP BY THE DEBTOR

The one condition for being entitled to expropriate assets in order to pay creditors is that those assets must belong to the debtor.

ARTICLE 2279 OF THE CIVIL CODE: POSSESSION IMPLIES TITLE

In this respect, attention should be drawn to article 2279 of the Civil Code:

“In matters of movable property, possession implies title. Nevertheless, a person who has lost an object or from whom it has been stolen may, over a term of three years from the day of its loss or theft, claim it back from the person in whose hands it is held, without prejudice to the latter’s right of recourse against the person from whom he has obtained it.”

This means that when the judicial officer visits the debtor’s address he may legally assume that the debtor is the owner of all the movable objects to be found there. No obligation is placed on the judicial officer to prove the title of ownership of all the movable property located there. He may, therefore, proceed with the attachment without problems.

ACTION TO ESTABLISH TITLE

If the judicial officer lists in his report assets that are not owned by the debtor, the actual owner must bring an action against the attachment officer to establish his title.

The procedure is governed by article 1514 of the Judicial Code:

A party claiming to be the owner of all or part of the objects distrained may object to the sale by the service of process on the distraining creditor, the distrained debtor and the judicial officer, containing a summons of the creditor and the debtor and specifying the proofs of ownership, on penalty of nullity.





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The claim stays the proceedings (solely as regards the objects claimed). The ruling thereon will then be given by the judge of attachments.

The clerk of the court will serve a third party notice on any other distraining creditors by judicial recorded delivery, with a copy of the summons and a request to appear.

The judgment is deemed to have been given after all parties have been heard. The losing claimant is ordered to pay damages, where appropriate, to the creditor.

The judicial officer to whom the objection has been notified enters the information, by the first working day thereafter at the latest, in the Register of Notices, to be added to the notice of attachment concerned, mentioning the interlocutory application and stating the identity of the claimant and, where applicable, of his counsel, as well specifying the court to which the matter has been referred.

The clerk of the court to which the application is referred remits to the Register of Notices the operative provisions of the judgment or order ruling as to the application, by the first working day following that judgment or order, so that the outcome of the action to establish title can be entered in the notice of attachment in the Register of Notices.

2. EXEMPTION OF PERSONAL PROPERTY FROM ATTACHMENT

EXEMPTION FROM ATTACHMENT BY LAW

Article 1408 of the Judicial Code lists the property that is not subject to attachment.

§ 1. *The following may not be attached, in addition to the goods declared to be exempt from attachment by special laws:*

1° the bedding needed by the debtor and his family, the clothing and household linen essential to their own use as well as the items of furniture required for storage, a washing machine and an iron, the necessary heating appliances for the family home, tables and chairs enabling the family to take their meals in common as well as crockery and basic domestic utensils for the family, an appliance for the preparation of hot meals, an appliance for the storage of foods, one lighting appliance per inhabited room, the objects needed by handicapped members of the family, objects used by dependent children living under the same roof, domestic pets, the objects and products necessary for bodily care and the maintenance of the premises and the tools required for upkeep of the garden, all of these to exclude luxury furnishings and objects;

2° books and other objects needed for the pursuit of studies or vocational training of the debtor or the dependent children living under the same roof;

3° unless they are used for the payment of their price, the objects essential to the debtor's occupation, up to the value of (EUR 2,500) at the time of the attachment, at the debtor's choice;

4° objects used for religious practice;

5° food and fuel needed by the debtor and his family for one month;

6° one cow, or twelve sheep or goats at the debtor's choice, as well as one pig and twenty-four farmyard animals, together with one month's supply of hay, fodder and grain for the said animals' feedstuffs and bedding.





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Non-attachable goods as defined in article 1408 of the Judicial Code are therefore mainly objects of a domestic, occupational, educational or religious nature.

► The procedure

If the debtor does not agree with the attachment of certain goods that he considers should be excluded pursuant to article 1408 of the Judicial Code, he may make his comments known to the judicial officer at the time of the attachment or at the latest within five days of service of notice of the attachment. This period is prescribed on penalty of its prescription, and any application entered after this period will be declared to be inadmissible.

ASSETS THAT ARE EXEMPT FROM ATTACHMENT BY THEIR NATURE

Movable assets are sometimes non-attachable by their nature and/or by being inseparable from the person of the debtor.

PROPERTY IN JOINT OWNERSHIP

If a given movable asset is co-owned by the debtor, the judicial officer may nevertheless proceed with its attachment.

PUBLIC ASSETS

According to the Court of Cassation, the general principle of the law on the continuity of public services is that assets associated with public services cannot be the subject of enforcement measures in that the continuity and operation of public bodies must be guaranteed.

• Attachment procedures

1. PRECAUTIONARY ATTACHMENT OF MOVABLE ASSETS

PROCEDURE

Any creditor in possession of a claim that is certain, of a fixed amount and due may proceed with the precautionary attachment of his debtor's assets if the latter's solvency is compromised.





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The precautionary attachment procedure is governed by articles 1422 et seq. of the Judicial Code:

“Art. 1422. The application for the precautionary attachment of movable personal property and unharvested fruits will contain, in addition to the particulars specified in article 1026, an indication of:

- 1° the title, causes and amount, or estimated amount, of the claim;*
- 2° the debtor’s surname, forename and address.”*

APPEALS

Pursuant to article 1419 of the Judicial Code, an appeal may be made against:

- an order granting or refusing authorisation to carry out a precautionary attachment
- an order granting or refusing to retract this authorisation

VALIDITY

In principle, an attachment expires automatically three years after the date of the order or the service of notice of the attachment, but its term may be extended if the judge of attachments has good grounds for so doing.

CONVERSION OF THE PRECAUTIONARY ATTACHMENT INTO AN ATTACHMENT IN EXECUTION OF A JUDGMENT

Article 1491 of the Judicial Code states:

“The judgment as to the merits of the application constitutes the enforcement title, where appropriate up to the amount stated in the judgments handed down; the mere service of notice of this title converts the precautionary attachment into an attachment in execution of that judgment.

This provision does not detract from the suspensive effect of appeals or from the rights pertaining to the owner in the event of a judicial order to ensure the conservation of property that the owner seeks to recover from a third party.

If the attachment is the subject of a dispute brought before the judge of attachments at the time of service of notice of the final decision on the merits of the dispute, the precautionary attachment is converted into an attachment in execution only when notice is served of the decision of the judge of attachments recognising that the attachment is in due order.”

2. ATTACHMENT OF GOODS IN EXECUTION OF A JUDGMENT

A creditor in possession of an enforceable right may carry out the enforced execution of the debtor’s goods to obtain payment of his claim.





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THE ORDER TO PAY

The procedure for the attachment of goods in execution of a judgment is contained in articles 1499 et seq. of the Judicial Code.

“Art. 1499. Any attachment of goods in execution of a judgment will be preceded by an order to pay given to the debtor at least one day before the attachment and, if the title consists of a judicial decision, serving notice of that decision, if it has not yet been given.”

THE ORDINARY ATTACHMENT PROCEDURE

At least one day must elapse between the service of the order to pay and the attachment.

The judicial officer makes a detailed note of the attachable movable goods that he records in the attachment report.

“Art. 1512. If the attachment is carried out at address of the debtor or in his presence, the copy of the report will be left with him on the spot, signed by the persons who have signed the original; if the debtor is absent, a copy will be forwarded to him or lodged as provided by articles 35 and 38; the person called upon by the judicial officer pursuant to article 1504 will countersign the report without charge.

If the attachment is carried out away from the debtor’s address and in his absence, a copy of the report will be served on him; the attachment will not be effective against him until service has been made, and the term for the sale will run from the time of service.

INTERLOCUTORY APPLICATIONS

Various forms of legal recourse still exist for all the parties concerned, enabling them to state their complaints in the course of execution.

► Objection by other creditors

By means of the objection, he may assert his rights and take steps to ensure that his claim is taken into account in a case file or a further attachment, and in the event of a procedure for the apportionment of the proceeds of sale among the creditors.

► Application to the judge of attachments to set aside a decision

Article 1498 of the Judicial Code states as follows:

“In the event of difficulties in execution, any interested party may enter an appeal before the judge of attachments, although the exercise of this action will not have a suspensive effect.

The judge of attachments will, where appropriate, order the attachment to be lifted.”





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THE SALE

At least one month must elapse between the service of the attachment report and the sale.

► Sale by private treaty

Since 1993, the debtor has been entitled to take the initiative in selling his assets by private agreement to his family or friends and to pay his creditors out of the proceeds (article 1526bis of the Judicial Code).

► Sale by order of the court

If a sale by private treaty cannot be realised and the debt cannot be paid by the distressed debtor, the creditor may proceed with a judicial sale.

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