

**ENFORCING A SUPPORT ORDERADMINISTRATION**  
**Service of Warrant for Distrain by Acknowledgment**

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**CS 507.6**

**SUPERSEDES**

CS 507.6 Service of Warrant for Dstraint by Acknowledgment, January 9, 2006

**REFERENCES**

MCA § 40-5-247(2)(b)

**Policy**

**Purpose**

This section provides specific procedures for serving a Warrant for Dstraint by acknowledgment. Procedures in CS 507.3 Enforcing a Support Lien by Warrant for Dstraint, describe the traditional method of service by a sheriff or levying officer. Two other sections--CS 500.3 FIDM/AEI and CS 507.5 Lottery Liens rely on the warrant process for enforcing support, refer to 507.3 Enforcing a Support Lien by Warrant for Dstraint or this section for appropriate service.

**General procedures**

The Warrant for Dstraint is the means by which the CSSD executes on or seizes property due, owing, or belonging to the obligor. For purposes of this section the entity that holds the property or asset being seized is referred to as the asset holder. Service by acknowledgment is accomplished when the CSSD sends the Warrant for Dstraint to the asset holder by regular mail, and the asset holder responds by acknowledging receipt of the warrant in writing. The asset holder then has 120 days to return the warrant and any collection directly to the CSSD; the asset holder may execute upon the warrant more than once during that time.

**Conditions**

The CSSD serves the Warrant for Dstraint by acknowledgment only if the asset being seized is in the form of cash. Seizure of non-cash personal or real property still requires service of the warrant by the sheriff or levying officer.

To maintain consistency in dealings with the asset holder, CSSD policy requires service by acknowledgment whenever the above conditions are met.

**Procedures**

**Procedures for Caseworker/Paralegal**

1. Identifying appropriate cases. Upon determining in sections CS 500.3, 507.3, or 507.5 that a warrant for dstraint is appropriate, and that the conditions for service by acknowledgment stated in POLICY apply, arranges for service and execution in this section beginning in step 2.

REMINDER: Enforcement by warrant for dstraint is appropriate for adjudicated debts only, as defined in sections CS 507.3 or in CS 507.5.

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2. Preparing the warrant. Upon identifying a case for action under this section, immediately puts a hold on the affected SEARCHS accounts, and proceeds in this step.

Prepares a warrant for distraint packet for service by acknowledgment. The address used for service of the action must include the name of the contact person, if any, designated by the asset holder to receive service directly from the CSSD.

If a warrant is being issued as a result of a FIDM hit or an AEI request from another state includes information about the type of pay source. Pay source types are MS FIDM, SS FIDM AND AEI. CS 500.3 FIDM/AEI provides details of the FIDM/AEI process.

If the warrant is for more than one case, the changes described in the FIDM Bulletin preceding CS 500.3 must also be entered.

Use the following address for the Montana Lottery:

Montana Lottery  
2525 N Montana Avenue  
Helena MT 59601

**NOTE:**

**Worker's Compensation Insurers address.** Addresses for Workers' Compensation Insurers can be found on SEARCHS. It is important that a warrant for distraint issued to the Montana State Fund include the adjuster handling the claim and the claim number.

- 1) Form CS 507-3A Notice of Warrant for Dstraint Pac alerts the asset holder that the warrant is being served. It also requests completion and return of the acknowledgement and the return of service. The complete form contains the Notice of Warrant for Dstraint, the Acknowledgment of Receipt of Notice and Warrant, and the Return of Service, same page as Acknowledgment.
- 2) It directs the asset holder to execute on the warrant and remit any non-exempt property of the obligor; notifies the obligor of the opportunity to contest the seizure. The complete form contains the Warrant for Dstraint, a Notice of Seizure and Right to Claim Exemptions, and a Request for Exemption Hearing.
- 3) Signs the Notice of Warrant for Dstraint.

**NOTE:**

**The Warrant for Dstraint form contains two parts that do not apply to the asset holder**, the Notice of Seizure and Right to Claim Exemptions, and the Request for Exemption Hearing. Under Montana law these parts must be included in the Warrant for Dstraint issued by the CSSD. The obligor does not receive the Notice and the Request until the CSSD mails the Warrant for Dstraint to him or her in step 7.

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3. Submitting the warrant for issuance. Prepares form CS-507.6C Request to Issue Warrant for Dstraint, selecting one of the service-by-acknowledgment options according to the preference of the region or worker. Proceeds in step 3.a or 3.b as applicable.
  - a. To be forwarded to asset holder. Sends to the Office of Administrative Law Judge (OALJ), retains a copy for the case file, the completed Request to Issue Warrant for Dstraint, the complete warrant for dstraint packet prepared in step 2.
  - b. To be returned to region. Sends to the OALJ, retains a copy for the case file, the completed Request to Issue Warrant for Dstraint, the Warrant for Dstraint prepared in step 2. If applicable the event must specify the single-state FIDM, multi-state FIDM, or AEI origin of the action, see section CS 500.3. Proceeds to step 5.

**Office of administrative law judge (OALJ)**

4. Issuing the warrant. Upon receipt of the Request to Issue Warrant for Dstraint submitted in step 3., reviews the request and the enclosed documents for completeness and obtains the signature and seal of the Administrative Law Judge (ALJ) on the Warrant for Dstraint. Makes one copy, sends a scanned version of the original to the region and mails the copy to the asset holder. Proceeds in step 4.a or 4.b according to the option requested by the caseworker/paralegal, retaining the original for the OALJ file.
  - a. Forwarding to asset holder. Prepares and sends to the asset holder by regular mail a package containing one copy of the issued Warrant for Dstraint, Notice of warrant for Dstraint and Notice of Levy and Exemptions, received with the warrant to the CSSD.  
  
Sends one copy to the caseworker/ paralegal. Enters SEARCHS case notes for the Warrant for Dstraint issued and the mail service Warrant for Dstraint sent to the asset holder.
  - b. Returning to region. Sends to the caseworker/paralegal issued Warrant for Dstraint. Enters a SEARCHS case note for the Warrant for Dstraint issued.

**Caseworker/Paralegal**

5. Serving the asset holder. Upon receipt of the issued Warrant for Dstraint from the OALJ, proceeds in step 5.a or 5.b as applicable.
  - a. OALJ has mailed package to asset holder. Retains issued Warrant for Dstraint in the case file. Checks SEARCHS for the date the OALJ mailed the warrant package to the asset holder, and monitors for a response in step 6. within 14 calendar days after mailing.
  - b. OALJ has returned all documents to region. Assembles a package for service on the asset holder comprising one copy of the issued Warrant for Dstraint, the Notice of Warrant for Dstraint and the original forms prepared in step 2.; a stamped envelope pre-addressed to the CSSD.  
  
Sends the package to the asset holder by regular mail; retains in the case file copies of the Notice of Warrant, along with the issued Warrant for Dstraint . Enters a SEARCHS case note for the mail service Warrant for Dstraint sent to the asset holder, and monitors for a response in step 6. within 14 calendar days after mailing.

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**NOTE:**

**14-day time frame.** The 14-day time frame is a matter of policy, and may be varied according to the situation. By law, the warrant directs the asset holder to make its return to the CSSD within 120 days. However, experience has shown that asset holders generally respond more quickly.

6. Asset holder's response to service. Monitors for the asset holder's timely response to the warrant package in 6.a through 6.f as applicable.
  - a. Fax return: no collection. If the asset holder faxes the Acknowledgment and Return of Service indicating there is no collection, removes the hold placed on the accounts in step 2. Enters a SEARCHS case note for the acknowledgment by fax and proceeds to step 10.
  - b. Fax return: collection in the mail. If the asset holder faxes the Acknowledgment and Return of Service indicating a collection, enters a SEARCHS case note for receipt of the acknowledgment by fax. Sets a tickler to check for receipt of the collection and original signed Acknowledgment by regular mail; when received, enters a SEARCHS case note for the return on the warrant from the asset holder. Meanwhile, proceeds immediately to step 7.
  - c. Mail return: no collection. If the asset holder sends the Acknowledgment and Return of Service by regular mail indicating there is no collection, removes the hold placed on the accounts in step 2. Enters a SEARCHS case note for the return on the warrant from the asset holder and proceeds to step 10.
  - d. Mail return: collection enclosed. If the asset holder sends the Acknowledgment and Return of Service by regular mail with a collection, without first faxing the information in step 6.b, enters a SEARCHS case note for the return on the warrant from the asset holder. Proceeds immediately to step 7.
  - e. Mail return: collection enclosed, future collections anticipated. If the asset holder sends the Acknowledgment and Return of Service with a collection by regular mail, but indicates it intends to perform additional executions within the available 120 days, enters a SEARCHS case note for the return on the warrant from the asset holder. Sets a tickler to check for receipt of any further collections and proceeds immediately to step 7.
  - f. No response. If the asset holder does not respond to the warrant package, contacts the asset holder to determine the status of the service and any execution.
    - i. If the asset holder has received the warrant package, but for some reason has not yet responded and agrees to cooperate, i.e., to send the acknowledgment and return, along with any collection, within a reasonable time, proceeds in this step as appropriate.

If the asset holder is the Montana Lottery, documents the contact on SEARCHS showing the Lottery has been informed of the seizure action--see the NOTE following sub step f(iii).
    - ii. If the asset holder has received the warrant package and is not willing to cooperate, proceeds simultaneously in step 10 for the original warrant, and in steps 6.f(ii)(A) and 6f(ii)(B) below. If the asset holder is the Montana Lottery, documents the contact on SEARCHS showing the Lottery has been informed of the seizure action--see the NOTE following sub step f(iii).

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- A. If there may be assets available for execution, arranges for traditional sheriff's service as in section CS 507.3. Note that this will require issuance of a new Warrant for Dstraint.
- B. Informs the CSSD FIDM Specialist immediately of any problems with the asset holder's compliance. The FIDM Specialist may consult with the regional legal unit regarding non-compliance and ways to improve the situation for the future.
- iii. If the asset holder has not received the warrant package, makes arrangements for re-delivery and proceeds in this step 6. as appropriate.

IMPORTANT: If the asset holder is the Montana Lottery, also takes the following steps to secure the winnings:

- A. Advises the Lottery of the seizure action and asks the Lottery to continue to hold the winnings; documents the contact.
- B. Immediately sends to the Lottery by fax an informational copy of the issued warrant, showing that seizure has been initiated.

**NOTE:**

**Lottery Winnings Released After 30 Days.** In the case of assets held by the Montana Lottery, it is essential that the Lottery be informed of the seizure action in this section within 30 days after the Notice of Lien was issued in section CS 507.5. If the Lottery is not informed of the seizure action within the prescribed time, it must by law release the payment to the winner.

- 7. Notice of Seizure. Upon, or within 5 calendar days after, being informed of a collection in step 6, and regardless of whether the CSSD has yet received the collection, completes the certificate of mailing in both the original and the one remaining copy of the Warrant for Dstraint (the certificate of mailing is found at the end of the Request for Exemption Hearing). Sends the (completed) copy of the Warrant for Dstraint to the obligor by regular mail, retaining the original for the case file.

Enters a SEARCHS case note for the warrant mailed, and monitors for a request for exemption hearing within 10 working days plus 3 mailing days. Upon receipt of any request directly from the obligor, immediately date-stamps the request and notifies the OALJ; forwards the request to the OALJ according to regular CSSD procedures.

- a. Hearing granted. If the obligor timely requests an exemption hearing, and the ALJ grants the hearing, prepares for and attends the exemption hearing, and participates in the hearing as a witness, as in section CS 507.3. Upon receiving the final decision and order from the hearing, determines whether the Notice has been resolved in favor of the seizure, against the seizure, or partly for and partly against the seizure. Proceeds to step 8.
- b. No request, or hearing denied. If the obligor does not timely request an exemption hearing, or if the ALJ denies a requested hearing, proceeds immediately to step 8. the Notice has been resolved in favor of the seizure.

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- c. Warrant returned undelivered. If the package is returned undelivered, checks with the asset holder for a different address. If none is available, or if the package is again returned undelivered, enters a SEARCHS case note for the return, stating the package was sent to the obligor's last known address as required by law. Proceeds to step 8. as if for a failure to request a hearing (the Notice has been resolved in favor of the seizure).
8. Processing the collection. Proceeds in 8a through 8c below as applicable.
- a. Distribution. For any collection for which a Notice of Seizure has been resolved in step 7. in favor or partly in favor of the seizure, removes the hold placed on the accounts in step 2. If further collections on the warrant are anticipated, leaves the hold on the accounts while proceeding in this step.  
  
Identifies the amount to be retained. The retained amount is the amount determined by the exemption hearing in step 7.a, or the entire collection if no exemption hearing was held.  
EXCEPTION: Amounts subject to superior liens, see sub step 8.c cannot be retained.  
  
Arranges for distribution of the retained amount as in section CS 500.3, 507.3, or 507.5. For any unretainable amounts proceeds in step 8.c.
  - b. Multiple collections. Upon receipt of any additional collections indicated in step 6.e and arriving after initiation of the Notice of Seizure in step 7., prepares form CS-507.6D, Notice of Subsequent Seizure. The subsequent notice form is accessible from the CSSD on-line policy manual at section 507.6D-W. Attaches a copy of the complete Warrant for Distraint sent to the obligor in step 7. Retains a copy of the subsequent notice for the case file, and sends the notice package to the obligor by regular mail. Enters a SEARCHS case note for the subsequent notice sent and monitors for a request for exemption hearing within 10 working days plus 3 mailing days. Returns to step 7. to resolve the notice.
  - c. Unretainable amounts. For any portion of the collection not distributed in step 8.a —because the ALJ determined an exemption or decreased the amount of the support debt, or because a superior lien was discovered, consults with the regional legal unit concerning the proper distribution of the unretainable amounts.

**NOTE:**

**Superior Liens.** Any portion of the collection subject to a verified superior lien must be returned to the appropriate party at once, regardless of the resolution of the Notice of Seizure. Generally, the asset holder will not remit amounts to the CSSD that are subject to superior liens; however, in cases where a superior lien may be suspected, the caseworker should work with the regional legal unit to identify any superior lien and, if found, to distribute the proceeds from the warrant as necessary to satisfy the lien. This consideration is especially important in an action involving service by acknowledgment, because the CSSD is executing the seizure directly, and must take the place of the sheriff in determining and satisfying superior liens as described in section CS 507.3.

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**ALJ/OALJ**

9. Exemption hearing. Expedites the granting or denying, scheduling, and conduct of the exemption hearing as in section CS 507.3; promptly issues the proposed and final orders. Note that the difference between a hearing in 507.3 and this section is that the proof of service does not involve the sheriff, and the sheriff does not receive copies of the hearing papers. When the final decision and order is issued, the CSSD can act on the seizure directly, according to the results of the hearing.

**Caseworker/Paralegal**

10. The action is complete when the warrant results in a seizure and the obligor does not request a hearing; or the obligor requests a hearing and either the request is denied or the ALJ issues a final decision and order; or the asset holder informs the CSSD there are no funds available; or the asset holder does not comply with the acknowledgment process. If the asset holder performs more than one seizure within the time allowed by the warrant, the action is not complete until all the seizures are resolved.

Acknowledgment and Return received from the asset holder.

**EXCEPTIONS:**

- If there is no collection and the asset holder has responded by fax, but has not mailed an Acknowledgment and Return with an original signature, the fax received in step 6a is acceptable.
- If the asset holder will not respond to service by acknowledgment, and the CSSD must initiate a new action for service by sheriff or private process, the original Warrant for Distraint should be accompanied by a note of explanation to the OALJ. Enters a SEARCHS case note for the original warrant returned to the OALJ.