

Disposal of uncollected goods

The following outlines some information about the steps you need to take before you can sell or dispose of goods that have been left with you in certain situations.

What is and is not covered?

If you are a private individual (not a business) this information covers the steps you must take where goods are left with you or on your property and you want the owner to collect them from you or your property.

The information here does not cover situations where:

- goods are left with you in the course of a business
- goods have been left for you to repair, inspect or store, as this would form part of a business
- goods are in your possession as a result of a criminal offence
- unsolicited goods are left with you by a business
- goods are abandoned in residential tenancy situations
- goods are subject to bailment.

In the following situations go to the Department of Mines, Industry Regulation and Safety website under the heading *Consumer Protection* for more information:

- If you are a business, the *Disposal of Uncollected Goods Act 1970 (WA)* ("the Act") sets out the steps that must be taken before you can do anything with goods left with you.
- If you are a landlord and goods have been left behind by a tenant.
- If a business leaves goods (samples of products, magazines or compact disks for example) that you did not agree to purchase

or receive, these goods are unsolicited. You cannot damage them but there is no obligation for you to pay for them either and if after the recovery period (three months or one month if you notify the business) the goods have not been collected, then you can keep them.

What does bailment mean?

Bailment is where the owner of goods leaves them in the custody and control of another person (the holder). The holder is responsible for the safekeeping and return of the goods.

Examples include, a car parked in a garage, or animals lodged with a kennel.

Sometimes the holder is called the 'bailee'. The person who has left the goods with you is the 'bailor'.

Do I have grounds for making an application to dispose of or sell goods?

You should get legal advice about:

- whether there is a legal basis to your application for disposal or sale
- the chances of you being successful
- the costs involved in going to court, for example, legal costs, court fees and witness fees, etc

- which court location is best to start the application.

Have you tried to negotiate a settlement of your problem?

Any legal action can be costly, time consuming and stressful. Also the unsuccessful party is usually ordered to pay the successful party's legal costs.

What information do I need in support of my application?

It is a good idea for you to keep:

- all material in one file
- copies of all letters
- original documents and send copies only to others
- photos if they will help (you should take the photo yourself, sign the back and note the date)
- keep in touch with witnesses and ask them to swear or affirm statutory declarations
- dated, written records of telephone conversations.

Are there time limits for commencing an application for disposal or sale?

Most legal proceedings must start within a certain period of time.

In some circumstances special considerations apply to actions concerning children.

In some cases the court may extend these time limits. In some cases the time limit can't be extended and you will be unable to have the court hear your case.

You should seek legal advice as soon as possible as to what these time limits are and what to do if you are outside a time limit.

Do I have to pay court fees?

Court fees are payable by you at various stages of the application. You can find out what fees are payable at any Magistrates Court of WA registry or on its website under Fees.

You do not have to pay the fee if you are under 18 when it is payable.

When you may be eligible to pay a set reduced fee

You can apply to a registrar or the court for a direction that you are an 'eligible individual'. Ask at the court registry for the form you need. If this direction is made you will only pay a set reduced fee (where applicable).

You are an 'eligible individual' if:

- you have one or more of the following cards:
 - a health care card
 - a health benefit card
 - a pensioner concession card
 - a Commonwealth seniors health card
 - a card issued by Centrelink or the Department of Veterans' Affairs card that certifies entitlement to Commonwealth health concessions

or

- if you are:
 - getting Austudy, a youth training allowance or Abstudy
 - a person who has a grant of legal aid for the proceedings.

Also, the court or a registrar may direct that you are an 'eligible individual' if satisfied that the full fee would cause you financial hardship and/or that it is in the interests of justice that you pay the set reduced fee.

What notice do I have to give before selling or disposing of goods?

Before disposing of or selling uncollected goods, you have to give notice. The forms are contained in

the *Disposal of Uncollected Goods Regulations 1971* (WA).

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The type of notice will depend on whether or not you are aware of:

- either the identity, or
- the whereabouts

of the person through whom you came into possession of the goods.

What if I know the other party or their whereabouts?

If you are aware of:

- the identity, or
- whereabouts of the other party

a Form 6 Notice must be completed and served on the other party.

A copy of this notice must also be sent to:

- the Commissioner of Police, and
- every other person, if any, you know has or claims to have an interest in the goods.

What must the notice contain?

Get legal advice as to the matters to be addressed in the notice to be given to the other party.

What if I do not know the other party or their whereabouts?

If you do not know the other party or their whereabouts a Form 5 Notice must be completed and served on the Commissioner of Police.

A copy of this notice must also be sent to every other person, if any, you know has or claims to have an interest in the goods.

What must the notice contain?

Get legal advice as to the matters to be covered in the notice to be given to the other party.

What can I do if nothing happens after the notice is given?

If one month has passed since notice was given you can make an application to the Magistrates Court for an order to sell or otherwise dispose of the goods. Applications must be lodged on the [eCourts Portal](#) unless an exemption has been obtained. The application must be lodged with the fee.

Applications must be started as a general procedure claim.

How do I make an application?

If you know the other party or their whereabouts

An application is made on a Form 10.

The Form 10 application must be lodged together with a supporting affidavit.

Get legal advice.

If you do not know the other party or their whereabouts

An application is made on a Form 9.

The Form 9 application must be lodged together with a supporting affidavit.

Get legal advice.

Which court is the application listed at?

In making your online application select the court nearest to the place where the goods:

- the subject of the application were bailed, or
- came into your possession.

The other person can object to the venue.

If the other person lodges an objection, the court has the power to change the venue if it would be more convenient or fair to the parties to do so.

A decision by a magistrate on an application to change venue cannot be appealed.

What is the next step after the application is filed?

Copies of the application and supporting affidavit must be served on the other party (if their identity and whereabouts are known) and all other persons appearing to be affected at least 14 clear days before the date fixed for hearing or within such lesser time as the court at the hearing will allow.

The application must be served as soon as practicable, and in any case within one year after the day on which it was lodged.

A copy of an application is to be served on any person appearing to be affected by it.

The application and supporting affidavit must be served personally.

You can arrange to serve the application yourself, or pay an extra fee for a bailiff to serve the application.

If you serve the application yourself you must:

- hand the application to the individual, or
- if the individual is a person under a legal disability, hand the claim to the individual's parent, guardian or litigation guardian and if they do not accept the document, put the document down in their presence and advise them of the nature of the document, or
- hand the document to someone at the person's usual or last known place of residence or business who is reasonably believed to be 18, or
- hand the document to the individual's lawyer or to a person who is authorised in writing to receive documents for the individual.

If the person you are trying to hand the document to will not accept it, put the document down in their presence and tell them what the document is.

If you are having difficulty you may have to ask a bailiff to serve the application. A bailiff has wider powers for the purpose of serving documents.

If serving the application will be too expensive or too difficult get legal advice.

If you organise the service yourself you must provide an affidavit of service to show that the application was served. This must be lodged with the court.

The number of kilometres travelled to serve the application can be stated in the affidavit of service. The fee for travel can be included as part of the costs on the application.

What happens after the application is lodged?

The application will be listed for a status conference as soon as practicable after lodging the document with the court. The date of the status conference will be on the copy of the application to be served.

What is a status conference?

A status conference is held before a magistrate. Its purpose is to allow for management of a case and to try to settle the case without a final hearing.

You must go to a status conference. Unless otherwise ordered by the court, you may go in person or be represented by your lawyer.

If a party or person ordered to go to a status conference doesn't go, the magistrate may enter judgment without trial (this is called default judgment).

The court will not hear an application unless the court is satisfied that a copy of the application has been served on all such persons as appear to the court to be affected by it.

What can the magistrate order at a status conference?

At a status conference the magistrate may order you and the other person to go to:

- mediation

- a pre trial conference
- another status conference
- file more court documents
- take other steps to help settle the case and get it ready for trial, or

they may list the case for trial.

What if the owner does not attend the status conference?

Non-attendance may result in judgment being entered without trial (default judgment). If this occurs get legal advice.

What happens if the case goes to a trial?

The rules of evidence apply in the court.

A lawyer need not represent you in a general procedure case but it is important that you have legal advice about how to conduct your case.

Do I have to go to the trial?

Unless the court orders otherwise, you must go to the trial in person.

If a person served with the application does not go in person or their lawyer fails to go for them, at the time and place fixed for the hearing of the application the court may make orders in their absence.

If:

- the other party was served with the application and supporting affidavit, and
- did not attend the trial, and
- default judgment was given

they may seek to have that judgment set aside.

Significant cost implications may be involved. An application to set aside default judgment must be made within 21 days after the date of judgment.

Get legal advice.

Can I have a lawyer at the trial?

Legal representation is allowed.

What costs are involved?

In most cases an unsuccessful party will be ordered to pay the successful party's legal costs. These will include things like lawyer's fees, court fees and witness fees.

If the court orders the other party to pay your costs an application can be made to the Magistrates Court to enforce this as a debt owed to you.

What orders can the court make?

The court may make an order authorising you to sell or otherwise dispose of the goods. You must remain in possession of the goods until they are entitled to be sold or otherwise disposed of according to the terms of the court order.

Get legal advice as to the type of orders needed in your circumstances.

Additional charges you may be able to claim

You may be able to claim a reasonable charge for the storage of goods during the period beginning with the date of the order and ending with the date of sale or other disposal. You may also be able to claim for the cost of insuring the goods, or costs in connection to the sale or disposal. Get legal advice.

What if proceedings have started to recover the goods?

If proceedings are started to recover the goods you must not sell or otherwise dispose of the goods until the proceedings are finished.

What happens after sale or disposal of the goods?

Where you sell the goods, you are entitled to recover as a debt the amount by which the proceeds of sale fall short of:

- the amount specified in any order
- the amount of any additional ('subsidiary') charges in any order, and

- the amount of any costs awarded to you that are not otherwise recovered or accounted for under any other provision of the Act. Recovery is against the other party, the person through whom possession was obtained. Get legal advice.

Excess money of sale

Where you sell the goods, the other party or the person through whom possession was obtained may recover any surplus as a debt.

Preparing and filing a record of sale or other disposal

Once the goods are disposed of under the terms of the order, you must, not more than 7 days after the date of sale or other disposal of the goods, prepare a record in relation to the goods.

Not more than 14 days after the date of the sale or other disposal of the goods you must lodge a copy of the record in the court in which the order was made.

A person who had, or claims to have had at the time of sale or other disposal of the goods, an interest in the goods, may inspect a copy of the record lodged in court.

It is an offence under the Act not to lodge a record. It is also an offence to prepare or lodge a false record.

Where can I get more information and the forms I need?

You can get more information about the court process from the Magistrates Court of WA website and a copy of notices and applications from any Magistrates Court of WA registry. Forms are also available online at this link

<https://www.magistratescourt.wa.gov.au/apps/DocList/doclist.aspx>

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Perth Office

32 St Georges Terrace,
Perth, WA 6000
1300 650 579
(08) 9261 6222

Great Southern Office

Unit 3, 43-47 Duke Street,
Albany, WA 6330
(08) 9892 9700

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
Bunbury, WA 6230
(08) 9721 2277

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive,
Geraldton, WA 6530
(08) 9921 0200

Goldfields Office

Suite 3, 120 Egan Street,
Kalgoorlie, WA 6430
(08) 9025 1300

Pilbara Office

28 Throssell Road,
South Hedland, WA 6722
(08) 9172 3733

West Kimberley Office

Upper Level, Woody's Arcade,
15-17 Dampier Terrace,
Broome, WA 6725
(08) 9195 5888

East Kimberley Office

98 Konkerberry Drive,
Kununurra, WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas Island,
Indian Ocean, WA 6798
(08) 9164 7529

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