

# Client Alert: Cannabis Businesses Can Use Writ of Attachment to Expedite Collections

**A Cannabis Industry Update:** Cannabis Businesses Can Use Writ of Attachment to Expedite Collections

With a recession looming, cannabis businesses are facing increasing difficulty collecting payment from other licensed cannabis businesses. Many businesses are delivering product on terms and not getting paid. The problem of delinquent payments stretches across the entire industry. However, few businesses are utilizing the most effective tool to compel payment: a writ of attachment.

A writ of attachment is a powerful court remedy to compel satisfaction of a debt. It is a court order to “attach” or seize an asset belonging to a debtor defendant while a lawsuit is pending. The purpose of the writ is to ensure recovery of payment in the event judgment is entered. The writ freezes a debtor’s property, prohibiting transfer, sale, or other disposition of the property. Obtaining a writ of attachment is a very technical process and serious undertaking.

This article looks at the technical requirements for a writ of attachment, the property subject to a writ of attachment, and the considerations facing cannabis businesses when pursuing a writ of attachment.

## **Elements for a Writ of Attachment**

The California Code of Civil Procedure governs the issuance of a writ of attachment. The writ of attachment is considered a legal remedy so a party must strictly meet all the requirements for issuance. The elements for a writ of attachment are set forth below.

A party applying for a right to attach order and writ of attachment (CCP § 484.010) bears the burden of establishing four elements: (1) its claim is for money “based upon a contract, express or implied”; (2) its claim is “probably valid”; (3) the attachment is sought for a proper purpose, i.e. recovery on the claim rather than harassment; and (4) the amount to be secured is “readily ascertainable” and greater than \$500.<sup>[1]</sup>

The issuance of a writ of attachment is not a discretionary matter. If a party makes the required showing, the court has to issue a right to attach order, which precedes the writ of attachment. Thereafter, the court will issue a writ of attachment for any property described in the motion. The court may limit the property subject to attachment. For example, if the property is exempt from attachment or the value outweighs the debt.

## **Property Subject to Attachment**

A writ of attachment can reach many types of property to secure payment of a debt. California law allows attachment of all corporate property for which there is a method of judicial levy. This includes: (1) Business Revenue; (2) Bank Deposit Accounts; (3) Personal Property; (4) Equipment; (5) Real Property; (6) Motor Vehicles; and (7) Safe Deposit Boxes, among other types of property. The reach of a writ of attachment against a business entity is virtually limitless. However, the law provides limitations on property of natural persons. Therefore, the writ of attachment is a more practical remedy against corporate debtors.

### **Surety Bond Requirement**

Before obtaining a writ of attachment, plaintiff must post an undertaking or a surety bond. The bond secures an amount for potential damages defendant may obtain if the attachment is later found to be wrongful. Since a writ of attachment deprives a party of the use of its property, a debtor can experience damages if a writ is wrongly issued. Thus, the party seeking a writ of attachment must put up a bond. The statutory minimum amount for the bond is \$10,000 but may be increased by a court upon a showing that \$10,000 is inadequate.

### **Considerations For Obtaining a Writ of Attachment**

A writ of attachment is not appropriate for all debts and circumstances. To obtain a writ, a creditor must file a complaint for a lawsuit or arbitration. Litigation is expensive and some debts are not worth pursuing through litigation. The size of the debt should justify the expense of commencing a lawsuit and applying for a writ. The minimum debt subject to a writ is \$500. However, a \$500 debt will not justify the time and expense of commencing litigation.

A second consideration is whether the debt is actually collectable or just bad debt. While attachment covers corporate property broadly, many cannabis businesses are struggling financially. In other words, there may not be property to satisfy the debt. At the debtor and its potential assets must be considered. In addition, a cannabis business debtor likely has several other creditors. In such cases, creditors will compete for priority for repayment. A delay in proceedings may cause the debtor to satisfy other creditors first. A writ of attachment seizes and places a lien on specific property to satisfy a debt, superseding other creditors.

A third consideration is to determine the goal in pursuing a writ of attachment. Sometimes a final judgment is not needed to get paid. A writ of attachment can be a very effective tool in facilitating a prompt settlement. In issuing a writ of attachment, the court finds that the creditor party is likely to win on the merits. As a result, few debtors will continue to defend a case they are likely to lose. Thus, a writ of attachment may encourage a debtor defendant to settle on favorable terms.

A writ of attachment can also be effective for a settlement with debtors that do not have assets to pay the debt in full. Many settlements involve a payment schedule and consent to judgment. If a party breaches the payment schedule, the creditor can file a motion to enforce the consent to judgment and have judgment entered against the debtor without a trial. A writ of attachment can be used to bring about a favorable settlement agreement with a payment schedule. Such a settlement would ensure that a debtor will adhere to the payment schedule or face a judgment and its enforcement.

Finally, the cash intensive nature of the cannabis industry may support the issuance of a writ of attachment on an expedited basis. Most writ hearings occur after a noticed motion, which requires at least 16 court days notice. A court can issue a writ of attachment on a shorter ex-parte basis when a creditor will likely suffer great or irreparable injury. A creditor to a cannabis business is likely to suffer a great injury due to the cash nature of the industry. Cash can be disposed of, transferred, or moved very easily. As a result, a creditor to a cannabis business is more likely to suffer a great loss than most other creditors. A writ of attachment can effectively

prevent a debtor business from using, transferring, or disposing of its cash. Thus, depending on the circumstances, a creditor may be able to obtain quicker relief against a cannabis business.

### **Takeaways**

A writ of attachment is an effective tool to ensure payment of a debt, before a court renders judgment. This can be particularly helpful for cannabis businesses. Cannabis businesses should consider a writ of attachment under certain circumstances. For example, when pursuing a large debt or when a prompt settlement is needed to increase cash flow. A writ of attachment can secure many types of property, including cash, business receipts, and bank accounts. Moreover, it prevents a debtor defendant from disposing of or transferring property. For these reasons, a writ of attachment remains one of the most effective tools for debt collection.

Nelson Hardiman attorneys have experience obtaining and defending writs of attachment. Aaron Lachant obtained a writ of attachment on a \$200,000 outstanding receivable in a breach of contract action. If you have any questions about strategies for collecting outstanding debts from a cannabis business or on how to obtain a writ of attachment, please contact Aaron Lachant at [alachant@nelsonhardiman.com](mailto:alachant@nelsonhardiman.com)

[1] (See [Goldstein v. Barak Construction \(2008\) 164 Cal.App.4th 845, 852.](#))

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