How to collect a debt without obtaining a judgment: Out-of-court forced execution in Quebec

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Since September 1, 2026, out-of-court forced execution has, in certain cases, made it possible to collect a monetary claim in Quebec without first obtaining a judgment on the merits, provided that there is a notarial act en minute containing a clause to that effect and that the obligation in question is determined or determinable, exigible, and not excluded by law or regulation.

What is out-of-court forced execution?

Out-of-court forced execution is a mechanism designed to facilitate the collection of certain claims by allowing, when a notarial act exists, for the execution of certain specified monetary obligations without first having to obtain a judgment on the merits. This new mechanism, which has been in effect since September 1, 2026, promotes access to justice and helps reduce the time and costs associated with such proceedings.

Out-of-court forced execution is not automatic; it must be specifically provided for in a notarial act and must relate to a clear, liquid, and exigible monetary obligation.

The basis of out-of-court forced execution: Notarial acts en minute

Access to this mechanism is contingent upon the inclusion, in a notarial act en minute, of a clause that complies with the requirements of the *Regulation respecting the forced execution of the payment of a claim resulting from the non-performance of an obligation recorded in a notarial act*, setting forth the terms and conditions for accessing out-of-court forced execution. The notary plays a crucial role, not only as a drafter but also as a public official bound by a duty to provide impartial and personalized advice, ensuring the parties' free and informed consent. With this in mind, the automatic inclusion of a dispute resolution clause simply through the use of non-customizable templates should be avoided: the clause must reflect an informed choice that has been explained and accepted by both parties.

Collaboration between the notary and the various professionals involved is therefore crucial, given the need to discuss with both parties whether it is appropriate to include such a clause. Since this provision must be agreed upon by both parties, it is important to fully understand how such a mechanism works, and to tailor the advice provided to the nature of the undertaking.

Greater caution is warranted when obligations are reciprocal (with the parties alternately acting as creditors and debtors), or when the contractual mechanism may lead to the monetization of an obligation that was originally in kind, which can increase uncertainty and encourage contestation. In general, caution is also warranted when obligations are future, conditional, complex, or subject to interpretation.

As for the requirements, the clause setting forth the terms and conditions for accessing out-of-court forced execution must, first and foremost, be included in the body of the notarial act en minute (and not in an appendix or an external clause). Next, the monetary obligation in question must be determined or determinable. The professional must also ensure that the monetary obligation does not fall into an excluded category by law or under the *Regulation respecting the forced execution of the payment of a claim resulting from the non-performance of an obligation recorded in a notarial act.*

The excluded categories include, as applicable:

- Non-monetary obligations;
- Certain obligations secured by a hypothec, and those subject to another method of execution;
- Situations involving consumer protection;
- Obligations subject to arbitration;
- Certain obligations involving the State; and
- Others.

The parties may also contractually exclude certain monetary obligations, provided that such exclusions are clearly stated.

How does out-of-court forced execution work?

Once the parties have agreed to include an out-of-court forced execution access clause, the decision to use out-of-court forced execution rests with the creditor, and the debtor may not object (section 3, *Regulation respecting the forced execution of the payment of a claim resulting from the non-performance of an obligation recorded in a notarial act*). The creditor may also choose another method of execution provided for in the act. However, if the notarial act requires mediation to resolve a dispute, the creditor must first comply with that requirement before using out-of-court forced execution.

The debtor's three options within the 30-day period

Subsequently, a payment order is prepared by the creditor in accordance with the mandatory requirements set forth in the regulation. The payment order and related documents are then served on the debtor, which formalizes the default and triggers the strict 30-day period granted to the debtor to remedy the default.

Before this deadline expires, the debtor has three options:

1. They may pay the claim in full, which will result in the termination of the out-of-court forced execution mechanism.
2. They may enter into a payment agreement, with or without the assistance of the bailiff, thereby suspending the out-of-court forced execution mechanism, with the possibility of reinstatement in the event of default.
3. They may contest the payment order in the appropriate court, which also has the effect of suspending the out-of-court forced execution mechanism. However, the contestation must be served on the creditor and the bailiff, and the supporting documents must be filed within ten days of the contestation.

What happens if there is no payment, no agreement, and no contestation?

In the absence of full payment, and in the absence of an agreement or a contestation, the bailiff may, upon expiration of the deadline, proceed with the execution of the payment order, which, under these circumstances, acquires the enforceable status of a judgment (section 9, *Regulation respecting the forced execution of the payment of a claim resulting from the non-performance of an obligation recorded in a notarial act*) and all of the effects thereof. The effects associated with out-of-court forced execution are significant. An uncontested payment order carries a prescription period equivalent to that of a judgment—that is, ten years—and allows for the registration of a legal hypothec and the resulting seizures, while maintaining its rank in the collocation of creditors. The creditor remains, however, an ordinary creditor and is subject to the applicable priority rules with respect to ranking.

Advantages and limitations of out-of-court forced execution for the creditor and the debtor

For the creditor, out-of-court forced execution can offer greater predictability when the debt is clear, quick access to execution without having to go through the courts, and a significant reduction in collection costs. The mechanism is also advantageous because of the effects associated with an uncontested payment order.

However, out-of-court forced execution has certain limitations. It should be noted that this mechanism is strictly limited to monetary obligations. If a dispute arises, it may be suspended or delayed, in which case legal action may become a possible outcome.

For the debtor, out-of-court forced execution includes some valuable protections. At the time the act is signed, the debtor receives guidance from the notary to ensure that their consent is freely given and informed. This mechanism can prevent immediate legal proceedings and allows the debtor to contest the payment order within the 30-day period granted to them.

Conclusion

Out-of-court forced execution is a tool accessible through a notarial act en minute. It is an effective, quick, and cost-efficient process that has the potential to prevent litigation if the required conditions are met.

Thus, this new measure is based on the existence of a valid notarial act en minute and determined or determinable monetary obligations that are not excluded. It is also based on strict compliance with the formalities of payment orders.

At a time when it is desirable to develop solutions to facilitate better access to justice, this alternative could help alleviate the backlog in the judicial system.

It will be interesting to closely monitor the implementation and future use of out-of-court forced execution, keeping in mind that it all begins with a notarial act en minute.

Takeaways

1. Out-of-court forced execution does not apply to all claims.

It pertains to certain monetary obligations set forth in a notarial act en minute containing a valid access clause.

2. This mechanism allows the creditor to take action without a prior judgment on the merits.

After a payment order is served, the debtor has 30 days to pay, reach a settlement, or contest the order.

3. An uncontested payment order may have effects comparable to those of a judgment.

In particular, it may become enforceable, trigger a 10-year prescription period, and allow for certain collection measures, subject to the applicable rules.