

Debt Collection - Legal Action in the Magistrate's Court of Victoria

Key message:

Act quickly to get advice if you have been sued for a debt in the Magistrate's Court of Victoria

The Magistrates Court Process

If the amount owed is \$100,000 or less, a creditor (known as the plaintiff) will serve a document called a Magistrates Court Complaint on you.

The court generally requires that it be served in person on any person over 16 living at your address. The Complaint will bear a court number and have attached two copies of a blank Notice of Defence form for you to complete.

If you do not file and serve a Notice of Defence, or take other appropriate action, within **21 days** from the date of service the creditor can apply for judgment against you without a hearing. The Court will generally make an order saying that you owe the debt, plus legal costs and interest.

Interest will accrue on the debt at a rate set by the Penalties Interest Rates Act 1983, which is currently (20 March 2012) 10.5 % a year.

What can I do if I am being sued for debt?

You should **seek legal advice immediately**.

If you do not agree you owe the debt, or all of the debt, you will need to get advice about filing a Notice of Defence even if you are discussing the matter with the creditor.

In some cases you may be able to transfer the matter to the [Victorian Civil and Administrative Tribunal](#).

The [Financial Ombudsman Service](#) and the [Credit Ombudsman Service](#) will hear some consumer credit disputes even after proceedings have been issued provided judgment has not been entered.

If you agree that you owe the debt, you should, as soon as possible after service of the Complaint on you, negotiate and enter a written agreement with the creditor to pay the debt or an agreed amount by instalments or a lump sum. If you do not negotiate payment as soon as possible the creditor may enter judgment against you. You must ensure that the creditor files a Notice

Warning: This fact sheet is intended as a guide to the law and should not be used as a substitute for legal advice. This information applies only in Victoria and reflects the law as at 20 March 2012.

Debt Collection - Legal Action in the Magistrate's Court of Victoria

of Discontinuance with the court, which will stop the court action against you.

Remember: this information only applies to the Magistrates' Court of Victoria. Different rules apply to other courts and tribunals in Victoria and outside Victoria. You should always seek legal advice quickly if court action is threatened or taken against you.

What can happen if judgment is entered against me?

Once a court judgment has been made against you for payment of a debt, there are various steps a creditor (also known as a judgment creditor) may take to recover the money owed. Some common steps are summarised below.

Oral examination

A judgment creditor may serve you with a summons to appear in Court to be questioned about your financial position. Failure to obey the summons may result in your arrest.

Instalment orders

A judgment creditor may apply to the Court for an order that you pay a judgment debt by instalments.

While not subject to any formal policy, an order will usually not be made unless the debt (if it is less than \$10,000) will be paid off within 2 or 3

years. Penalty interest on the debt will continue to accrue while the instalment order is in place.

If an instalment order is in place and is being complied with, or if a copy of an application for an instalment order has been served upon the judgment creditor, all other methods of enforcement of the judgment are blocked.

An instalment order will not be made without the consent of the judgment debtor where the income of the judgment debtor is derived solely from social security benefits: JDRA, s 12(2).

You may wish to apply for an instalment order because it has the effect of stopping other enforcement action, such as a warrant to seize property.

Warrant to seize property

A warrant to seize property is an order to the Sheriff to seize and sell goods belonging to the debtor unless the debtor pays the amount stated in the warrant. A debtor is entitled to refuse entry to the Sheriff. The Sheriff cannot seize any property which could not be taken from a bankrupt. This protects necessary household items and a car worth less than \$7050.00 (this amount is indexed annually and refers to the equity in the car meaning the value of the car less the amount owing under finance). Tools used to earn an income

Warning: This fact sheet is intended as a guide to the law and should not be used as a substitute for legal advice. This information applies only in Victoria and reflects the law as at 20 March 2012.

Debt Collection - Legal Action in the Magistrate's Court of Victoria

are also protected up to an amount of \$3,500.00 (indexed).

If you own real estate, the creditor may apply to another Court to have the Sheriff sell your share of your house or land.

Further information

Consumer Action Law Centre

Telephone: (03) 9629 6300, or 1300 881 020 for country callers.

Email: advice@consumeraction.org.au

Free telephone and email information regarding credit and debt and consumer law matters



If you are deaf or have a hearing or speech impairment, you can call through the National Relay Service (NRS):

Attachment of earnings

A judgment creditor may apply to the Court for an order compelling a debtor's employer to deduct instalments from the debtor's salary and pay them to the creditor. Income received as a social security payment cannot be subject to attachment.

- TTY users can phone 133677 then ask for 1300 881 020
- Speak & Listen (speech-to-speech) users can phone 1300 555 727 then ask for 1300 881 020
- Internet relay users can connect to NRS on www.relayservice.com.au then ask for 1300 881 020

Moneyhelp

Telephone: 1800 149 689

www.moneyhelp.org.au

Warning: This fact sheet is intended as a guide to the law and should not be used as a substitute for legal advice. This information applies only in Victoria and reflects the law as at 20 March 2012.