

## Debt Collection - Old Debts

### KEY MESSAGE:

- There are **time limits for taking legal action**. This means that **your debts may become too old** for a creditor to successfully take legal action against you.
- **Get advice before making payment or acknowledging an old debt** - in some circumstances these actions may start the limitation period all over again and your debt will no longer be statute barred.

A debt may be statute barred (too old to pursue) because the *Limitations of Actions Act 1958* (Vic) places a limit on the time a debt collector or lender has to take legal action to recover a debt.

There are a number of reasons for having a time limit on debt collector taking legal action, including:

- as time goes by, relevant evidence is likely to be lost;
- it is oppressive, even “cruel”, to a defendant to allow an action to be brought long after the circumstances which gave rise to it have passed.<sup>1</sup>

If a creditor starts court action against you, and the debt is statute barred, you will have a complete defence to the action.

If you tell a creditor that you believe a debt is statute barred, the creditor will be unlikely to start any court action against you.

The *Credit Reporting Code of Conduct* prohibits credit reporting agencies from listing statute-barred debts.

### 6 YEAR LIMITATION PERIOD

For most debts, a debt collector or lender must recover the debt, or begin court action to recover the debt within 6 years of the date:

- on which the debt became due and you didn't pay; or
- that you last made a payment; or
- that you admitted in writing that you owed the debt.

The limitation period starts from the *latest* event in the above list.

### 15 YEAR LIMITATION PERIOD

The creditor has more than 6 years to collect the debt if:

- a court judgment has been entered, in which case a 15 year limitation period applies for new actions;
- the debt relates to a mortgage over property in which case a 15 year limitation period applies.

These are complex issues and getting advice is recommended.

### REQUESTING PROOF

Unless you are sure an old debt is not statute barred: :

- **do not admit** that you owe the debt;
- **do not make a payment;**
- **do not accept a debt collector's word** that you owe the debt.

You should **request details of the alleged debt and seek advice immediately**.

Refer to our sample letter: *Asking for proof* below.

<sup>1</sup> [Brisbane South Regional Health Authority v Taylor 186 CLR 541](#)

**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.

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Once you have received the information from the lender or debt collector, get advice from one of the listed contacts to make sure you know your rights.

### **TAKING ACTION**

If you believe that an old debt is statute barred get advice and then send a letter to the creditor or debt collector telling them this. Refer to our sample letter below: Alleging a debt is statute barred

Refer to our factsheet *I'm being hassled by a debt collector* for what to do if you are being hassled by a debt collector.

### **IF YOU HAVE PAID OR ACKNOWLEDGED AN OLD DEBT**

If a debt collector or a lender represents that legal action will or may be taken when a defence at law applies, this may be misleading and deceptive or unconscionable if the debtor has not had the opportunity to obtain legal advice.

Seek legal advice to find out whether you can argue that because the conduct of the lender or the debt collector you should still have the benefit of the debt being statute barred.

Taylor took legal action to get her money back. The Supreme Court found that Collection House had engaged in unconscionable conduct.

### **IF THE LENDER OR DEBT COLLECTOR TAKES LEGAL ACTION**

If the lender or debt collector takes legal action, get legal advice immediately, see *Further Information* below. Short time limits apply to take action.

It is up to you to raise the defence that the debt is statute barred if you think it applies. If you do nothing, the lender or debt collector might get a court judgment (that you must repay the debt).

The lender or debt collector will then have up to 15 years - or possibly more - to enforce the judgment.

In many cases, a complaint to [Financial Ombudsman Service](#) or the [Credit Ombudsman Service](#) will have the effect of stopping actual or threatened legal action in relation to credit debts.

If you do nothing, a court judgment will be entered against you.

### **Collection House v Taylor<sup>2</sup>**

Taylor was contacted about a 10 year old debt by a debt collector acting on behalf Collection House. The debt collector said that if payment was not made legal action may be an option. Taylor didn't know that the debt was statute barred.

Taylor agreed she would pay \$4,500 on her credit card immediately, and that she would arrange a \$500 increase in her credit card limit in order to pay the balance.

<sup>2</sup> [Collection House Limited v Taylor \[2004\] VSC 49 \(3 March 2004\)](#)

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### Sample Letter - Requesting proof

Dear Sir/Madam

**Re: Your claim for payment (*put in their reference number if you have it.*)**

I refer to your demand for payment in relation to above.

Please provide me with all documents which you rely on to demand payment and assert that any limitation period under the *Limitations of Actions Act 1958* (Vic) has not expired, including:

1. contract documents;
2. account statements;
3. invoices;
4. court judgments (if applicable);
5. notices of assignment (if applicable)

I do not acknowledge any debt in relation to the above matter and this letter is not to be interpreted as doing so.

Yours faithfully  
(Your Name)

### Sample Letter - Alleging the debt is statute barred

Dear Sir/Madam

**Re: Your claim for payment (*put in their reference number if you have it.*)**

I refer to your demand for payment in relation to above.

According to your own records, you are out of time to issue legal proceedings for recovery of the alleged debt.

If you commence legal proceedings against me for recovery of the alleged debt, I will defend this action on the basis that it is more than six years since your alleged cause of action arose: section 5(1)(a), *Limitations of Actions Act 1958* (Vic).

Any further attempts to pursue the alleged debt will constitute prohibited debt collection conduct. If you continue to contact me in relation to the alleged debt I may seek compensation under the *Fair Trading Act 1999* (Vic). I will also make a complaint to Consumer Affairs Victoria, the Australian Securities and Investment Commission and the Australian Competition and Consumer Commission.

Yours faithfully  
(Your Name)

## **Further information**

### **Consumer Action Law Centre**

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

Email: [advice@consumeraction.org.au](mailto: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):

- 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](http://www.relayservice.com.au) then ask for 1300 881 020

### **Financial Ombudsman Service**

Tel: 1300 78 08 08

[http://fos.org.au/centric/home\\_page.jsp](http://fos.org.au/centric/home_page.jsp)

### **Credit Ombudsman Service**

Tel: 1800 138 422

[www.cosl.com.au](http://www.cosl.com.au)

### **Moneyhelp**

Telephone: 1800 149 689

[www.moneyhelp.org.au](http://www.moneyhelp.org.au)