

## **What if I have been sued for a debt?**

by Consumer Action - Friday, March 18, 2016

<https://help.consumeraction.org.au/what-if-i-have-been-sued-for-a-debt/>

### **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. This is known as a Default Judgment. It will be difficult to get this overturned.

Interest will accrue on the debt at a rate set by the Penalties Interest Rates Act 1983, which is currently (1 June 2017) 10 % 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](#) (VCAT).

If the debt is related to a credit contract you may be able to make a complaint to the [Australian Financial Complaints Authority](#) even after proceedings have been issued provided judgment has not been entered. Such a complaint will have the effect of putting the legal action on hold while the Ombudsman is dealing with the Dispute. If you agree that you owe the debt, you should, as soon as possible after you have been

served with the Court Complaint, 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 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.

#### **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 \$7,700.00 (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 are also protected up to an amount of \$3,750.00 (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.

#### **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.

### **What can I do if judgment is entered against me?**

If you were not served with the complaint, or there is a good reason why a defence wasn't filed at the Court it may be possible to have the judgment set aside. It is essential that you take legal advice immediately.

#### **Apply for an instalment order**

You may apply to the Court for an order that you pay the judgment debt by instalments. If an Order is made, it will have the effect of stopping other enforcement actions, such as a warrant to seize property.

There is no formal policy but it is clear that the debt must be repaid within a reasonable time. Some financial counsellors have suggested, as a guide only, that if the debt is less than \$10,000, your application should arrange to pay the debt within two to three years. Penalty interest on the debt will continue to accrue whilst the instalment order is in place.

### **Further information**

#### **National Debt Helpline**

Telephone: 1800 007 007

[www.ndh.org.au](http://www.ndh.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 6 June 2017.**

Image from [walknboston](#).