

FACT SHEET: RESPONDING TO DEBT RECOVERY PROCEEDINGS

Received a Letter of Demand

Check that the creditor (person who is claiming the debt) has basis for claim. You may request documentation from the creditor that provides the basis of claim.

If you agree with Letter of Demand

If you agree with the claims in the letter of demand, you may consider contacting the creditor to arrange payment of the debt. If you cannot afford to pay the debt in full, you may negotiate a 'time to pay' arrangement with the creditor. If the creditor is finance company or bank, you may apply to Consumer, Trade & Tenancy Tribunal for an order to vary repayments.

If you disagree with the Letter of Demand

If you do not agree that you owe the debt asserted, you may write to the creditor explaining why you think that you do not owe the debt.

Received Statement of Claim

If you fail to respond to the letter of demand or dispute the debt owed, the creditor is likely to commence legal action to recover the alleged debt. If the creditor commences proceedings, you will be served with a Statement of Claim.

Check the Creditor has commenced proceedings in the right court

If the debt claimed is under \$10 000 –proceedings should be commenced in the Small Claims Division of the Local Court

If debt claimed is up to \$60 000 proceedings should be commenced in the Local Court

If debt claimed exceeds \$72 000 –proceedings should be commenced in the District or Supreme Court

If the creditor commenced proceedings in wrong court – you may object.

Admit the debt

If you agree you owe all of the debt, there are four options:

1. You may confess to the debt and file a Notice of Motion (Form 36) to pay by instalments;
2. Negotiate directly with the creditor to make a 'time to pay' arrangement. If an arrangement is agreed to, make sure the court is notified in writing;
3. Ask the creditor to agree to discontinue the proceedings in return for full payment of the debt. Confirm arrangement in writing - complete and file 'Agreement as to Judgment' (Form 28). Request creditor to file a 'Notice of Discontinuance (Form 27);
4. Do nothing. The Plaintiff may then obtain a judgment and enforce the debt.

Filing a Defence

If you dispute the debt you have 28 days to enter appearance (Form 4) or file a defence (Form 6). You must set out clearly the grounds for your defence. If necessary, you may consider requesting further particulars (information) from the creditor regarding the debt. Some common grounds for a defence are:

- The debt has been repaid;
- The debt arose more than 6 years ago;
- You were released by the plaintiff from the debt being claimed;
- The product or service was not provided as agreed;
- The amount being claimed is inaccurate, as previous payments have been made that have not been reflected in the amount being claimed.

All forms are available from the Lawlink Website. Click on the 'Forms & Fees' Link (www.lawlink.nsw.gov.au/lawlink/local_courts).

Responding to a Default Judgment

If you do not respond to the Statement of Claim within 28 days, the creditor may apply for a default judgment in your absence. You may make an application to the court to have it set aside. You will need to complete and file with the court a:

- Notice of Motion (Form 18); and
- supporting affidavit

To be successful in having the default judgment set aside your affidavit must:

- state that you have a defence based on the merits of the case; and
- provide satisfactory reasons for your failure to file a defence within 28 days.

The Courts Decision

The Local Court can order you to pay the debt plus costs if;

- You ignore the Statement of Claim for **28 days** and the creditor asks the court to make a judgment debt;
- You confess;
- You defend the statement of claim but lose.

If the court makes an order that you must pay the debt. The creditor has 12 years to take further action and receive money owed by you.

Examination Notice- This requires you to answer questions about your income. If you do not do this you will be required to attend court for questioning about your financial circumstances.

Garnishee- The creditor can ask the court to take money from your wages or bank account until the debt is paid.

Writ of levy of property- This is a court order allowing a Sheriff Officer to remove items from your house to pay the debt.

Bankruptcy- If the debt is over \$2,000 the creditor can apply to the Federal Court to have you declared bankrupt. If you receive a bankruptcy notice you should receive advice immediately.

Contacts

Law Access NSW
The Consumer Credit Legal Centre
Financial Counsellors

Ph1300 888 529
Ph (02) 9212 4111 or 1800 808 488
Ph: 1800 808 488

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.

