

Judgement

Court Proceedings: Secured Debts

*This fact sheet will cover what can happen if a creditor (“lender”) takes legal action against you. This fact sheet applies to **secured debts** (where property is held as security for the loan). If you have been served with court documents for unsecured debts (e.g. credit cards, personal loans, etc.), request a copy of our **‘Court Proceedings: Unsecured Debts Fact Sheet’**.*

Important limitation periods

- ✘ If you have been served with legal documents in the **Supreme or County Court**, you have 10 days to file an Appearance from the date you were served. Filing an Appearance informs the court you will appear at the hearing;
- ✘ You will then have 30 days after you file an Appearance to file a Defence;
- ✘ If the matter is in the **Magistrates’ Court**, you will have 21 days from the date you were served with the court documents to file a Defence.

Please make sure you seek legal advice as quickly as possible if you think you have a defence to the court proceedings. If you are considering self-representing, we recommend talking to Justice Connect - [Self Representation Services – Justice Connect](#).

You have been served but Defence not filed and judgment not entered

You can still contact the creditor directly to negotiate a way to deal with the debt, even if you have been served with court documents. You have more options available to you before the creditor obtains a judgment in court against you, so please seek advice as quickly as possible.

If you have attempted to negotiate with the creditor and they refuse to provide reasonable assistance, you can lodge a complaint with the **Australian Financial Complaints Authority (“AFCA”)**. If you do this before a Defence is filed or judgment is entered against you, the court proceedings will be put on hold. **Not all creditors are members of AFCA.**

If the court proceedings relate to a mortgage, you can request a copy of our **‘Mortgage Stress Fact Sheet’** to find out what options you have available to you before judgment has been entered in court. If you have been served with court documents for another debt e.g. unsecured debts, request a copy of our **‘Debt Options Fact Sheet’** or **‘Court Proceedings: Unsecured Debts Fact Sheet’**.

Default judgment

If you do not enter an alternative arrangement to deal with the debt, lodge a complaint with AFCA or file a Defence to the court proceedings, the creditor can apply to the court for **default judgment**. The creditor will have 15 years from the date of the judgment order to pursue you for repossession of your property or payment of the judgment plus interest and legal costs.

Warrant for possession/seizure and sale

If the creditor has obtained a judgment against you in court the next step is usually a **warrant for possession/seizure and sale of property**.

The warrant can only be applied for within six years from the date of the judgment order (unless the creditor has permission (leave) from the court). If a warrant for possession of your property has been granted to the creditor, it will be valid for one year from the date it was issued.

The **Sherriff's office** is in charge of executing a warrant for possession on behalf of the creditor.

Notice to vacate property

If you own a property and the court has granted a judgment and the creditor has also obtained a warrant for possession, the next step is a **notice to vacate property**. A notice to vacate property will typically be served on you by the Sherriff's office and it will specify a 'notice to vacate date'. If you do not vacate the property by this date you may be issued with a '**final notice to vacate**'. If you do not vacate your property by the date mentioned on your final notice to vacate, the Sherriff will usually come to your property within two weeks of the date on the notice and change your locks and evict you from the property.

Once you have been evicted, possession of your property will be handed over by the Sherriff to the creditor so that they can conduct a sale of your property. If you still have **belongings in your property** and you have not arranged to remove them, your belongings can be discarded once possession has been handed over to the creditor.

Sale of property

Typically, the next step will be that the creditor (lender) will conduct a sale of the property. This means they will sell the property to recover the outstanding debt owed to them under the court judgment. The lender will **list the property for sale**, and it may be sold privately or via an auction.

The lender should not sell the property for less than market value. If you have appraisals for the market value of the property, you can give this to the lender. If the lender does sell the property for less than market value, you can make an application to the court requesting the lender pay you the

difference in what your property should have been sold at (market value) compared to the price the lender actually sold your property for.

Lodging AFCA complaint before property is sold by lender

As mentioned, not all lenders/creditors are a member of AFCA. However, if the lender who has secured a judgment order in court against you is a **member of AFCA** and the property has **not yet been sold**, you can lodge a complaint with AFCA.

AFCA has limited jurisdiction to deal with complaints once the lender has a successful court judgment against you; however, they may consider allowing the complaint to go ahead in limited circumstances to allow you time to:

- ✘ **Sell the property yourself** – (AFCA usually only allows three months and requires evidence you have taken steps to do this – e.g. Exclusive Sale/Auction Authority from real estate agency); or
- ✘ **Refinance** – Again, you will need some evidence that you are nearing a successful application for refinance with another lender; or
- ✘ **Get your affairs in order to comply with judgment** – this would mean paying the judgment in full or paying the arrears balance on the mortgage (and asking the bank to allow you to continue with the loan); or
- ✘ **Make an application to have the judgment order against you set aside** – Unless you have paid the judgment in full, the only way to have the judgment set aside is if the lender agrees (by consent) or if you have a defence to the initial proceeding.

There is no guarantee lodging an AFCA complaint will stop the sale!

Shortfall debt

If your property has been sold and you have a **shortfall debt** (there was not enough equity in the property to cover the full mortgage debt), you can request a copy of our '**Debt Options Checklist**' or speak with a financial counsellor for guidance on how you can deal with this debt.

You can call **Mortgage Stress Victoria** on **1800 572 292** and our lawyers and financial counsellors may be able to provide you with advice or assistance.

This fact sheet is a guide to the law in Victoria, Australia. It is not a substitute for legal advice.

Written by Mortgage Stress Victoria in March 2023.